

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 876

FINAL READING

(SECOND)

Introduced by Banking, Commerce and Insurance Committee: Mines,
18, Chairperson; Flood, 19; Jensen, 20; Johnson, 37;
Langemeier, 23; Louden, 49; Pahls, 31; Redfield, 12

Read first time January 5, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections
2 8-148.04, 8-179, 45-335, 45-336, 45-701, 45-702,
3 45-709, 45-714, 45-717, 45-717.01, 45-901, 45-906,
4 45-907, 45-911, 45-912, 45-915, 45-916, 45-917, 45-919,
5 45-922, 45-925, 45-1002, 45-1007, and 45-1026, Reissue
6 Revised Statutes of Nebraska, sections 8-141, 8-178,
7 8-1001.01, 8-1008, 8-1010, 8-1012, 8-1111, 8-1601,
8 8-1602, 8-1605, 76-1006, 76-1007, 76-1008, and 76-1012,
9 Revised Statutes Cumulative Supplement, 2004, sections
10 8-1,140, 8-355, 21-17,115, 45-706, 45-707, and 45-1024,

1 Revised Statutes Supplement, 2005, and sections 9-705
2 and 9-707, Uniform Commercial Code, Reissue Revised
3 Statutes of Nebraska; to adopt the Financial Data
4 Protection and Consumer Notification of Data Security
5 Breach Act of 2006; to change provisions relating to
6 state-chartered bank loan limits; to change community
7 development investment conditions; to change provisions
8 relating to the reorganization of nationally-chartered
9 banks as state-chartered banks; to revise powers of
10 state-chartered banks, building and loan associations,
11 and credit unions; to change and provide enforcement
12 powers and procedures under the Nebraska Sale of Checks
13 and Funds Transmission Act; to provide for a transaction
14 exempt from registration under the Securities Act of
15 Nebraska; to change provisions relating to bankers
16 banks; to change provisions, provide enforcement powers
17 and procedures, and change administrative fines under
18 the Mortgage Bankers Registration and Licensing Act;
19 to change provisions relating to the Delayed Deposit
20 Services Licensing Act; to change provisions relating
21 to installment sales and loans and to define terms; to
22 change requirements relating to charges, loan fees, and
23 the writing of loans or other products or services as
24 prescribed; to change provisions relating to the sale
25 of trust property; to eliminate obsolete provisions;

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1 to change provisions relating to the effectiveness of
2 certain secured transactions; to harmonize provisions; to
3 provide operative dates; to repeal the original sections;
4 and to declare an emergency.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known
2 and may be cited as the Financial Data Protection and Consumer
3 Notification of Data Security Breach Act of 2006.

4 Sec. 2. For purposes of the Financial Data Protection and
5 Consumer Notification of Data Security Breach Act of 2006:

6 (1) Breach of the security of the system means the
7 unauthorized acquisition of unencrypted computerized data that
8 compromises the security, confidentiality, or integrity of personal
9 information maintained by an individual or a commercial entity.
10 Good faith acquisition of personal information by an employee or
11 agent of an individual or a commercial entity for the purposes of
12 the individual or the commercial entity is not a breach of the
13 security of the system if the personal information is not used or
14 subject to further unauthorized disclosure. Acquisition of personal
15 information pursuant to a search warrant, subpoena, or other court
16 order or pursuant to a subpoena or order of a state agency is not a
17 breach of the security of the system;

18 (2) Commercial entity includes a corporation, business
19 trust, estate, trust, partnership, limited partnership, limited
20 liability partnership, limited liability company, association,
21 organization, joint venture, government, governmental subdivision,
22 agency, or instrumentality, or any other legal entity, whether for
23 profit or not for profit;

24 (3) Encrypted means converted by use of an algorithmic
25 process to transform data into a form in which the data is rendered

1 unreadable or unusable without use of a confidential process or
2 key;

3 (4) Notice means:

4 (a) Written notice;

5 (b) Telephonic notice;

6 (c) Electronic notice, if the notice provided is
7 consistent with the provisions regarding electronic records and
8 signatures set forth in 15 U.S.C. 7001, as such section existed
9 on January 1, 2006;

10 (d) Substitute notice, if the individual or commercial
11 entity required to provide notice demonstrates that the cost of
12 providing notice will exceed seventy-five thousand dollars, that
13 the affected class of Nebraska residents to be notified exceeds one
14 hundred thousand residents, or that the individual or commercial
15 entity does not have sufficient contact information to provide
16 notice. Substitute notice under this subdivision requires all of
17 the following:

18 (i) Electronic mail notice if the individual or
19 commercial entity has electronic mail addresses for the members of
20 the affected class of Nebraska residents;

21 (ii) Conspicuous posting of the notice on the web site of
22 the individual or commercial entity if the individual or commercial
23 entity maintains a web site; and

24 (iii) Notice to major statewide media outlets; or

25 (e) Substitute notice, if the individual or commercial

1 entity required to provide notice has ten employees or fewer and
2 demonstrates that the cost of providing notice will exceed ten
3 thousand dollars. Substitute notice under this subdivision requires
4 all of the following:

5 (i) Electronic mail notice if the individual or
6 commercial entity has electronic mail addresses for the members of
7 the affected class of Nebraska residents;

8 (ii) Notification by a paid advertisement in a local
9 newspaper that is distributed in the geographic area in which the
10 individual or commercial entity is located, which advertisement
11 shall be of sufficient size that it covers at least one-quarter of
12 a page in the newspaper and shall be published in the newspaper at
13 least once a week for three consecutive weeks;

14 (iii) Conspicuous posting of the notice on the web
15 site of the individual or commercial entity if the individual or
16 commercial entity maintains a web site; and

17 (iv) Notification to major media outlets in the
18 geographic area in which the individual or commercial entity is
19 located;

20 (5) Personal information means a Nebraska resident's
21 first name or first initial and last name in combination with any
22 one or more of the following data elements that relate to the
23 resident if either the name or the data elements are not encrypted,
24 redacted, or otherwise altered by any method or technology in such
25 a manner that the name or data elements are unreadable:

1 (a) Social security number;

2 (b) Motor vehicle operator's license number or state
3 identification card number;

4 (c) Account number or credit or debit card number,
5 in combination with any required security code, access code,
6 or password that would permit access to a resident's financial
7 account;

8 (d) Unique electronic identification number or routing
9 code, in combination with any required security code, access code,
10 or password; or

11 (e) Unique biometric data, such as a fingerprint,
12 voice print, or retina or iris image, or other unique physical
13 representation.

14 Personal information does not include publicly available
15 information that is lawfully made available to the general public
16 from federal, state, or local government records; and

17 (6) Redact means to alter or truncate data such that
18 no more than the last four digits of a social security number,
19 motor vehicle operator's license number, state identification card
20 number, or account number is accessible as part of the personal
21 information.

22 Sec. 3. (1) An individual or a commercial entity
23 that conducts business in Nebraska and that owns or licenses
24 computerized data that includes personal information about a
25 resident of Nebraska shall, when it becomes aware of a breach

1 of the security of the system, conduct in good faith a reasonable
2 and prompt investigation to determine the likelihood that personal
3 information has been or will be used for an unauthorized purpose.
4 If the investigation determines that the use of information about
5 a Nebraska resident for an unauthorized purpose has occurred or
6 is reasonably likely to occur, the individual or commercial entity
7 shall give notice to the affected Nebraska resident. Notice shall
8 be made as soon as possible and without unreasonable delay,
9 consistent with the legitimate needs of law enforcement and
10 consistent with any measures necessary to determine the scope
11 of the breach and to restore the reasonable integrity of the
12 computerized data system.

13 (2) An individual or a commercial entity that maintains
14 computerized data that includes personal information that the
15 individual or commercial entity does not own or license shall
16 give notice to and cooperate with the owner or licensee of the
17 information of any breach of the security of the system when
18 it becomes aware of a breach if use of personal information
19 about a Nebraska resident for an unauthorized purpose occurred
20 or is reasonably likely to occur. Cooperation includes, but is
21 not limited to, sharing with the owner or licensee information
22 relevant to the breach, not including information proprietary to
23 the individual or commercial entity.

24 (3) Notice required by this section may be delayed if
25 a law enforcement agency determines that the notice will impede

1 a criminal investigation. Notice shall be made in good faith,
2 without unreasonable delay, and as soon as possible after the
3 law enforcement agency determines that notification will no longer
4 impede the investigation.

5 Sec. 4. (1) An individual or a commercial entity
6 that maintains its own notice procedures which are part of
7 an information security policy for the treatment of personal
8 information and which are otherwise consistent with the timing
9 requirements of section 3 of this act, is deemed to be in
10 compliance with the notice requirements of section 3 of this act if
11 the individual or the commercial entity notifies affected Nebraska
12 residents in accordance with its notice procedures in the event of
13 a breach of the security of the system.

14 (2) An individual or a commercial entity that is
15 regulated by state or federal law and that maintains procedures for
16 a breach of the security of the system pursuant to the laws, rules,
17 regulations, guidances, or guidelines established by its primary or
18 functional state or federal regulator is deemed to be in compliance
19 with section 3 of this act if the individual or commercial
20 entity notifies affected Nebraska residents in accordance with the
21 maintained procedures in the event of a breach of the security of
22 the system.

23 Sec. 5. Any waiver of the provisions of the Financial
24 Data Protection and Consumer Notification of Data Security Breach
25 Act of 2006 is contrary to public policy and is void and

1 unenforceable.

2 Sec. 6. For purposes of the Financial Data Protection
3 and Consumer Notification of Data Security Breach Act of 2006, the
4 Attorney General may issue subpoenas and seek and recover direct
5 economic damages for each affected Nebraska resident injured by a
6 violation of the act.

7 Sec. 7. The Financial Data Protection and Consumer
8 Notification of Data Security Breach Act of 2006 applies to
9 the discovery of or notification pertaining to a breach of the
10 security of the system that occurs on or after the operative date
11 of this section.

12 Sec. 8. Section 8-141, Revised Statutes Cumulative
13 Supplement, 2004, is amended to read:

14 8-141 (1) No bank shall directly or indirectly loan
15 to any single corporation, limited liability company, firm, or
16 individual, including in such loans all loans made to the several
17 members or shareholders of such firm, limited liability company, or
18 corporation, for the use and benefit of such corporation, limited
19 liability company, firm, or individual, more than twenty-five
20 percent of the paid-up capital, surplus, and capital notes and
21 debentures or fifteen percent of the unimpaired capital and
22 unimpaired surplus of such bank, whichever is greater. Such
23 limitations shall be subject to the following exceptions:

24 (a) Obligations of any person, partnership, limited
25 liability company, association, or corporation in the form of notes

1 or drafts secured by shipping documents or instruments transferring
2 or securing title covering livestock or giving a lien on livestock,
3 when the market value of the livestock securing the obligation is
4 not at any time less than one hundred fifteen percent of the face
5 amount of the notes covered by such documents, shall be subject
6 under this section to a limitation of ten percent of such capital,
7 surplus, and capital notes and debentures or ten percent of such
8 unimpaired capital and unimpaired surplus, whichever is greater, in
9 addition to such twenty-five percent of such capital and surplus
10 or such fifteen percent of such unimpaired capital and unimpaired
11 surplus;

12 (b) Obligations of any person, partnership, limited
13 liability company, association, or corporation secured by not
14 less than a like amount of bonds or notes of the United States
15 issued since April 24, 1917, or certificates of indebtedness of the
16 United States, treasury bills of the United States, or obligations
17 fully guaranteed both as to principal and interest by the United
18 States shall be subject under this section to a limitation of ten
19 percent of such capital, surplus, and capital notes and debentures
20 or ten percent of such unimpaired capital and unimpaired surplus,
21 whichever is greater, in addition to such twenty-five percent of
22 such capital and surplus or such fifteen percent of such unimpaired
23 capital and unimpaired surplus;

24 (c) Obligations of any person, partnership, limited
25 liability company, association, or corporation which are secured

1 by negotiable warehouse receipts in an amount not less than one
2 hundred fifteen percent of the face amount of the note or notes
3 secured by such documents shall be subject under this section to
4 a limitation of ten percent of such capital, surplus, and capital
5 notes and debentures or ten percent of such unimpaired capital
6 and unimpaired surplus, whichever is greater, in addition to such
7 twenty-five percent of such capital and surplus or such fifteen
8 percent of such unimpaired capital and unimpaired surplus; or

9 (d) Obligations of any person, partnership, limited
10 liability company, association, or corporation which are secured by
11 readily marketable collateral having a market value, as determined
12 by reliable and continuously available price quotations, in an
13 amount at least equal to the face amount of the note or notes
14 secured by such collateral, shall be subject under this section to
15 a limitation of ten percent of such capital, surplus, and capital
16 notes and debentures or ten percent of such unimpaired capital
17 and unimpaired surplus, whichever is greater, in addition to such
18 twenty-five percent of such capital and surplus or such fifteen
19 percent of such unimpaired capital and unimpaired surplus.

20 (2) For purposes of this section, the discounting of
21 bills of exchange, drawn in good faith against actually existing
22 values, and the discounting of commercial paper actually owned
23 by the persons negotiating the same shall not be considered
24 as the lending of money. Loans or obligations shall not be
25 subject to any limitation under this section, based upon such

1 capital and surplus or such unimpaired capital and unimpaired
2 surplus, to the extent that they are secured or covered by
3 guaranties, or by commitments or agreements to take over or
4 to purchase the same, made by any federal reserve bank or by
5 the United States Government or any authorized agency thereof,
6 including any corporation wholly owned directly or indirectly by
7 the United States, or general obligations of any state of the
8 United States or any political subdivision thereof. The phrase
9 general obligation of any state or any political subdivision
10 thereof means an obligation supported by the full faith and credit
11 of an obligor possessing general powers of taxation, including
12 property taxation, but does not include municipal revenue bonds and
13 sanitary and improvement district warrants which are subject to the
14 limitations set forth in this section. Any bank may subscribe to,
15 invest in, purchase, and own single-family mortgages secured by the
16 Federal Housing Administration or the United States Department of
17 Veterans Affairs and mortgage-backed certificates of the Government
18 National Mortgage Association which are guaranteed as to payment
19 of principal and interest by the Government National Mortgage
20 Association. Such mortgages and certificates shall not be subject
21 under this section to any limitation based upon such capital
22 and surplus or such unimpaired capital and unimpaired surplus.
23 Obligations representing loans to any national banking association
24 or to any banking institution organized under the laws of any
25 state, when such loans are approved by the Director of Banking and

1 Finance by regulation or otherwise, shall not be subject under this
2 section to any limitation based upon such capital and surplus or
3 such unimpaired capital and unimpaired surplus. Loans or extensions
4 of credit secured by a segregated deposit account in the lending
5 bank shall not be subject under this section to any limitation
6 based on such capital and surplus or such unimpaired capital
7 and unimpaired surplus. The department may adopt and promulgate
8 rules and regulations governing the terms and conditions of such
9 security interest and segregated deposit account. For the purpose
10 of determining lending limits, partnerships shall not be treated
11 as separate entities. Each individual shall be charged with his or
12 her personal debt plus the debt of every partnership in which he
13 or she is a partner, except that for purposes of this section (a)
14 an individual shall only be charged with the debt of any limited
15 partnership in which he or she is a partner to the extent that
16 the terms of the limited partnership agreement provide that such
17 individual is to be held liable for the debts or actions of such
18 limited partnership and (b) no individual shall be charged with the
19 debt of any general partnership in which he or she is a partner
20 beyond the extent to which (i) his or her liability for such
21 partnership debt is limited by the terms of a contract or other
22 written agreement between the bank and such individual and (ii)
23 any personal debt of such individual is incurred for the use and
24 benefit of such general partnership.

25 (3) A loan made within lending limits at the initial time

1 the loan was made may be renewed, extended, or serviced without
2 regard to changes in the lending limit of a bank following the
3 initial extension of the loan if (a) the renewal, extension, or
4 servicing of the loan does not result in the extension of funds
5 beyond the initial amount of the loan or (b) the accrued interest
6 on the loan is not added to the original amount of the loan in the
7 process of renewal, extension, or servicing.

8 (4) Any bank may purchase or take an interest in life
9 insurance contracts for any purpose incidental to the business
10 of banking. A bank's purchase of any life insurance contract, as
11 measured by its cash surrender value, from any one life insurance
12 company shall not at any time exceed twenty-five percent of the
13 paid-up capital, surplus, and capital notes and debentures of such
14 bank or fifteen percent of the paid-up capital, surplus, undivided
15 profits, and capital notes and debentures of such bank, whichever
16 is greater. A bank's purchase of life insurance contracts, as
17 measured by their cash surrender values, in the aggregate from all
18 life insurance companies shall not at any time exceed thirty-five
19 percent of the paid-up capital, surplus, undivided profits, and
20 capital notes and debentures of such bank. The limitations under
21 this subsection on a bank's purchase of life insurance contracts,
22 in the aggregate from all life insurance companies, shall not apply
23 to any contract purchased prior to April 5, 1994.

24 (5) For purposes of this section, unimpaired capital
25 and unimpaired surplus means (a) the bank's tier 1 and tier 2

1 capital included in the bank's risk-based capital under the capital
2 guidelines of the appropriate federal banking agency, based on the
3 bank's most recent consolidated report of condition filed under 12
4 U.S.C. 1817(a)(3), and (b) the balance of the bank's allowance for
5 loan and lease losses not included in the bank's tier 2 capital
6 for purposes of the calculation of risk-based capital by the
7 appropriate federal banking agency, based on the bank's most recent
8 consolidated report of condition filed under 12 U.S.C. 1817(a)(3).
9 Notwithstanding the provisions of section 8-1,140, the department
10 may, by order, deny or limit the inclusion of goodwill in the
11 calculation of a bank's unimpaired capital and unimpaired surplus
12 or in the calculation of a bank's paid-up capital and surplus.

13 Sec. 9. Section 8-148.04, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 8-148.04 (1) Any bank may make a community development
16 investment or investments either directly or through purchasing an
17 equity interest in or an evidence of indebtedness of an entity
18 primarily engaged in making community development investments, if
19 the following conditions are satisfied:

20 (a) ~~The investments~~ An investment under this subsection
21 ~~de does not~~ expose the bank to unlimited liability;

22 (b) The bank's aggregate investment in any one entity
23 under this subsection does not exceed five percent of its capital
24 and surplus and its aggregate investments under this subsection
25 ~~do not exceed~~ ten percent of its capital and surplus. If the

1 bank's investment in any one entity will exceed five percent of its
2 capital and surplus, the prior written approval of the department
3 must be obtained; and

4 (c) All investments made under this subsection are
5 accounted for on the bank's books under "Other Assets".

6 (2) Nothing in this section shall prevent a bank from
7 charging off as a contribution an investment made pursuant to
8 subsection (1) of this section.

9 (3) Such subscription, investment, possession, or
10 ownership shall not be subject to sections 8-148, 8-149, and 8-150.

11 (4) For purposes of this section, community development
12 investments means investments of a predominantly civic, community,
13 or public nature and not merely private and entrepreneurial.

14 Sec. 10. Section 8-178, Revised Statutes Cumulative
15 Supplement, 2004, is amended to read:

16 8-178 Any national banking association located and doing
17 business within the State of Nebraska which follows the procedure
18 prescribed by the laws of the United States may convert into a
19 state bank or merge or consolidate with a state bank upon a vote
20 of the holders of at least two-thirds of the capital stock of such
21 state bank when the resulting state bank meets the requirements
22 of the state law as to the formation of a new state bank. If the
23 national banking association has been further chartered to conduct
24 a trust company business within a trust department of the bank,
25 the trust department to be converted shall meet the requirements of

1 state law as to the formation of a trust company business within a
2 trust department of a state bank.

3 The public hearing requirement of subdivision (1) of
4 section 8-115.01 and the rules and regulations of the department
5 ~~shall only~~ be required only if (1) after publishing a notice of the
6 proposed conversion in a newspaper of general circulation in the
7 county where the main office of the national bank is located, the
8 expense of which shall be paid by the applicant bank, the director
9 receives an objection to the conversion within fifteen days after
10 such publication or (2) in the discretion of the director, the
11 condition of the bank warrants a hearing. If the national bank has
12 been further chartered to conduct a trust company business within a
13 trust department of the bank, the notice of the proposed conversion
14 of the national bank shall include notice that the trust department
15 will be converted in connection with the national bank conversion.

16 Sec. 11. Section 8-179, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 8-179 (1) The resulting state bank shall file a statement
19 with the department, under the oath of its president or cashier,
20 (a) showing that the procedure prescribed by the laws of the United
21 States and by this state have been followed, ~~and~~ (b) setting forth
22 in the statement the matter prescribed by sections 8-121 and 8-1901
23 to 8-1903, and (c) if the national bank has been further chartered
24 to conduct a trust company business within a trust department of
25 the bank, setting forth the matter prescribed by sections 8-159

1 to 8-162.01. Upon payment of all applicable fees, pay the fees
2 ~~prescribed therein, and thereupon~~ the department shall issue to
3 such corporation the certificate provided for in section 8-122, and
4 a charter to transact the business provided for in its articles
5 of incorporation, and, if applicable, a charter to conduct a trust
6 company business within a trust department of the bank.

7 (2) The department may accept good assets of any such
8 national bank, worth not less than par, in lieu of the payment
9 otherwise provided by law for the stock of such resulting
10 bank. When the parties requesting the conversion, merger, or
11 consolidation are officers or directors of either the national bank
12 or of the state bank, they shall be accepted without investigation
13 as parties of integrity and responsibility. Unless the resulting
14 bank is at a different location than the former national or
15 state bank, the department shall recognize the public necessity,
16 convenience, and advantage of permitting the resulting bank and, if
17 applicable, the trust company business within a trust department of
18 the bank, to engage in business.

19 Sec. 12. Section 8-1,140, Revised Statutes Supplement,
20 2005, is amended to read:

21 8-1,140 Notwithstanding any of the other provisions of
22 the Nebraska Banking Act or any other Nebraska statute, any bank
23 incorporated under the laws of this state and organized under
24 the provisions of the act, or under the laws of this state as
25 they existed prior to May 9, 1933, shall directly, or indirectly

1 through a subsidiary or subsidiaries, have all the rights, powers,
2 privileges, benefits, and immunities which may be exercised as of
3 ~~March 23, 2005~~ the operative date of this section, by a federally
4 chartered bank doing business in Nebraska, including the exercise
5 of all powers and activities that are permitted for a financial
6 subsidiary of a federally chartered bank. Such rights, powers,
7 privileges, benefits, and immunities shall not relieve such bank
8 from payment of state taxes assessed under any applicable laws of
9 this state.

10 Sec. 13. Section 8-355, Revised Statutes Supplement,
11 2005, is amended to read:

12 8-355 Notwithstanding any of the provisions of Chapter
13 8, article 3, or any other Nebraska statute, except as provided
14 in section 8-345.02, any association incorporated under the laws
15 of the State of Nebraska and organized under the provisions
16 of such article shall have all the rights, powers, privileges,
17 benefits, and immunities which may be exercised as of ~~March 23,~~
18 ~~2005~~ the operative date of this section, by a federal savings
19 and loan association doing business in Nebraska. Such rights,
20 powers, privileges, benefits, and immunities shall not relieve
21 such association from payment of state taxes assessed under any
22 applicable laws of this state.

23 Sec. 14. Section 8-1001.01, Revised Statutes Cumulative
24 Supplement, 2004, is amended to read:

25 8-1001.01 Sections 8-1001 to 8-1014 and sections 18 and

1 19 of this act shall be known and may be cited as the Nebraska Sale
2 of Checks and Funds Transmission Act.

3 Sec. 15. Section 8-1008, Revised Statutes Cumulative
4 Supplement, 2004, is amended to read:

5 8-1008 ~~(1)~~ After a license has been granted, the licensee
6 shall maintain the bond or securities in the amount prescribed by
7 section 8-1006, as follows:

8 ~~(a)~~ (1) Each licensee who does not have on file or
9 deposit a bond or securities in the undiminished sum of two
10 hundred fifty thousand dollars shall file semiannual reports with
11 the director setting forth the locations at which the licensee
12 sells checks in this state as of January 1 and July 1 in each
13 year with the report for each such date being due on or before
14 the fifteenth day thereafter. The licensee shall not be required
15 to list on such reports those agents which are exempted by the
16 provisions of section 8-1003. Within ten days following the filing
17 of such reports, the principal sum of the bond or securities shall
18 be increased to reflect any increase in the number of locations
19 and may be decreased to reflect any decrease in the number of
20 locations; and

21 ~~(b)~~ (2) If the director finds at any time that any bond
22 required by the Nebraska Sale of Checks and Funds Transmission Act
23 is insecure, insufficient, or exhausted, an additional bond to be
24 approved by the director shall be filed by the licensee within ten
25 days after written demand therefor by the director.

1 ~~(2) Until July 1, 2005, a licensee licensed prior to July~~
2 ~~16, 2004, may maintain the bond or securities amount such licensee~~
3 ~~was originally licensed under.~~

4 Sec. 16. Section 8-1010, Revised Statutes Cumulative
5 Supplement, 2004, is amended to read:

6 8-1010 Each licensee may conduct business at one or
7 more locations within this state and through or by means of such
8 employees, agents, or representatives as the licensee may designate
9 and appoint from time to time. In addition to any reports which
10 may be required by subdivision ~~(1)(a)~~ (1) of section 8-1008,
11 each licensee shall notify the Department of Banking and Finance
12 annually on or before July 1 of each year of all such locations
13 except for agents which are exempted under section 8-1003. No
14 license under the Nebraska Sale of Checks and Funds Transmission
15 Act shall be required of any employee, agent, or representative who
16 is acting for or in behalf of a licensee in the sale of checks of
17 which the licensee is the issuer.

18 Sec. 17. Section 8-1012, Revised Statutes Cumulative
19 Supplement, 2004, is amended to read:

20 8-1012 (1) The director may, following a hearing under
21 the Administrative Procedure Act, suspend or revoke a license
22 issued under the Nebraska Sale of Checks and Funds Transmission Act
23 on any ground on which he or she may refuse to grant a license or
24 for violation of the ~~Nebraska Sale of Checks and Funds Transmission~~
25 ~~Act~~ act, for failure to pay an annual fee, or for the failure

1 or refusal of a licensee to comply with any order, decision, or
2 finding of the director made pursuant to the act. In furtherance
3 of the provisions of this section, the director, if he or she has
4 reasonable cause to believe that the grounds for revocation exist,
5 may investigate the business, books, and records of the licensee.

6 (2) Except as provided in this section, a license shall
7 not be revoked or suspended except after notice and a hearing in
8 accordance with the Administrative Procedure Act.

9 (3) A licensee may voluntarily surrender a license by
10 delivering to the director written notice of the surrender but a
11 surrender shall not affect civil or criminal liability for acts
12 committed before the surrender or liability for any fines which may
13 be levied against the licensee or any of its officers, directors,
14 shareholders, partners, or members for acts committed before the
15 surrender.

16 (4)(a) If a licensee fails to renew its license as
17 required by section 8-1009 and does not voluntarily surrender the
18 license pursuant to this section, the Department of Banking and
19 Finance may issue a notice of expiration of the license to the
20 licensee in lieu of revocation proceedings.

21 (b) If a licensee fails to maintain a surety bond as
22 required by section 8-1008, the department may issue a notice of
23 cancellation of the license in lieu of revocation proceedings.

24 (5) Revocation, suspension, surrender, cancellation, or
25 expiration of a license shall not impair or affect the obligation

1 of a preexisting lawful contract between the licensee and any
2 person.

3 (6) Revocation, suspension, cancellation, or expiration
4 of a license shall not affect civil or criminal liability for
5 acts committed before the revocation, suspension, cancellation, or
6 expiration or liability for any fines which may be levied against
7 the licensee or any of its officers, directors, shareholders,
8 partners, or members for acts committed before the revocation,
9 suspension, cancellation, or expiration.

10 Sec. 18. (1) The Department of Banking and Finance may
11 order any person to cease and desist whenever the department
12 determines that the person has violated any provision of the
13 Nebraska Sale of Checks and Funds Transmission Act. Upon entry of
14 a cease and desist order, the director shall promptly notify the
15 affected person that such order has been entered, of the reasons
16 for such order, and that upon receipt, within fifteen business
17 days after the date of the order, of written request from the
18 affected person a hearing will be scheduled within thirty business
19 days after the date of receipt of the written request, unless the
20 parties consent to a later date or the hearing officer sets a later
21 date for good cause. If a hearing is not requested and none is
22 ordered by the director, the order shall remain in effect until it
23 is modified or vacated.

24 (2) The director may vacate or modify a cease and desist
25 order if he or she finds that the conditions which caused its entry

1 have changed or that it is otherwise in the public interest to do
2 so.

3 (3) A person aggrieved by a cease and desist order of
4 the director may obtain judicial review of the order in the manner
5 prescribed in the Administrative Procedure Act. The director may
6 obtain an order from the district court of Lancaster County for
7 enforcement of the cease and desist order.

8 Sec. 19. (1) For the purpose of any investigation or
9 proceeding under the Nebraska Sale of Checks and Funds Transmission
10 Act, the director or any officer designated by him or her may
11 administer oaths and affirmations, subpoena witnesses and compel
12 their attendance, take evidence, and require the production of
13 any books, papers, correspondence, memoranda, agreements, or other
14 documents or records which the director deems relevant or material
15 to the inquiry. If any person refuses to comply with a subpoena
16 issued under this section or to testify with respect to any matter
17 relevant to the proceeding, the district court of Lancaster County
18 may, on application of the director, issue an order requiring the
19 person to comply with the subpoena and to testify. Failure to obey
20 an order of the court to comply with the subpoena may be punished
21 by the court as civil contempt.

22 (2) The director may request the Attorney General to
23 enforce the act. A civil enforcement action by the Attorney General
24 may be filed in the district court of Lancaster County. A civil
25 enforcement action by the Attorney General may seek temporary and

1 permanent injunctive relief, restitution for a customer aggrieved
2 by a violation of the act, and costs for the investigation and
3 prosecution of the enforcement action.

4 (3) Failure to comply with the act shall not affect the
5 validity or enforceability of any transaction. A person entering
6 into a transaction pursuant to the act is not required to ascertain
7 the extent of compliance with the act.

8 (4) Nothing in the act shall limit any statutory or
9 common-law right of any person to bring any action in any court
10 for any act involved in the sale of checks or funds transmission
11 business or the right of the state to punish any person for any
12 violation of law.

13 Sec. 20. Section 8-1111, Revised Statutes Cumulative
14 Supplement, 2004, is amended to read:

15 8-1111 Except as provided in this section, sections
16 8-1103 to 8-1109 shall not apply to any of the following
17 transactions:

18 (1) Any isolated transaction, whether effected through a
19 broker-dealer or not;

20 (2) (a) Any nonissuer transaction by a registered agent of
21 a registered broker-dealer, and any resale transaction by a sponsor
22 of a unit investment trust registered under the Investment Company
23 Act of 1940, in a security of a class that has been outstanding in
24 the hands of the public for at least ninety days if, at the time
25 of the transaction:

1 (i) The issuer of the security is actually engaged in
2 business and not in the organization stage or in bankruptcy or
3 receivership and is not a blank check, blind pool, or shell
4 company whose primary plan of business is to engage in a merger
5 or combination of the business with, or an acquisition of, an
6 unidentified person or persons;

7 (ii) The security is sold at a price reasonably related
8 to the current market price of the security;

9 (iii) The security does not constitute the whole or part
10 of an unsold allotment to, or a subscription or participation by,
11 the broker-dealer as an underwriter of the security;

12 (iv) A nationally recognized securities manual designated
13 by rule and regulation or order of the director or a document
14 filed with the Securities and Exchange Commission which is publicly
15 available through the Electronic Data Gathering and Retrieval
16 System (EDGAR) contains:

17 (A) A description of the business and operations of the
18 issuer;

19 (B) The names of the issuer's officers and the names
20 of the issuer's directors, if any, or, in the case of a
21 non-United-States issuer, the corporate equivalents of such persons
22 in the issuer's country of domicile;

23 (C) An audited balance sheet of the issuer as of a
24 date within eighteen months or, in the case of a reorganization
25 or merger when parties to the reorganization or merger had such

1 audited balance sheet, a pro forma balance sheet; and

2 (D) An audited income statement for each of the issuer's
3 immediately preceding two fiscal years, or for the period of
4 existence of the issuer if in existence for less than two years,
5 or, in the case of a reorganization or merger when the parties to
6 the reorganization or merger had such audited income statement, a
7 pro forma income statement; and

8 (v) The issuer of the security has a class of equity
9 securities listed on a national securities exchange registered
10 under the Securities Exchange Act of 1934 or designated for
11 trading on the National Association of Securities Dealers Automated
12 Quotation System (NASDAQ), unless:

13 (A) The issuer of the security is a unit investment trust
14 registered under the Investment Company Act of 1940;

15 (B) The issuer of the security has been engaged in
16 continuous business, including predecessors, for at least three
17 years; or

18 (C) The issuer of the security has total assets of at
19 least two million dollars based on an audited balance sheet as of
20 a date within eighteen months or, in the case of a reorganization
21 or merger when parties to the reorganization or merger had such
22 audited balance sheet, a pro forma balance sheet; or

23 (b) Any nonissuer transaction in a security by a
24 registered agent of a registered broker-dealer if:

25 (i) The issuer of the security is actually engaged in

1 business and not in the organization stage or in bankruptcy or
2 receivership and is not a blank check, blind pool, or shell
3 company whose primary plan of business is to engage in a merger
4 or combination of the business with, or an acquisition of, an
5 unidentified person or persons; and

6 (ii) The security is senior in rank to the common stock
7 of the issuer both as to payment of dividends or interest and upon
8 dissolution or liquidation of the issuer and such security has been
9 outstanding at least three years and the issuer or any predecessor
10 has not defaulted within the current fiscal year or the three
11 immediately preceding fiscal years in the payment of any dividend,
12 interest, principal, or sinking fund installment on the security
13 when due and payable;

14 (3) Any nonissuer transaction effected by or through
15 a registered agent of a registered broker-dealer pursuant to an
16 unsolicited order or offer to buy, but the director may by rule or
17 regulation require that the customer acknowledge upon a specified
18 form that the sale was unsolicited and that a signed copy of each
19 such form be preserved by the broker-dealer for a specified period;

20 (4) Any transaction between the issuer or other person
21 on whose behalf the offering is made and an underwriter or among
22 underwriters;

23 (5) Any transaction in a bond or other evidence of
24 indebtedness secured by a real or chattel mortgage or deed of trust
25 or by an agreement for the sale of real estate or chattels if the

1 entire mortgage, deed of trust, or agreement, together with all
2 the bonds or other evidences of indebtedness secured thereby, are
3 offered and sold as a unit. Such exemption shall not apply to any
4 transaction in a bond or other evidence of indebtedness secured by
5 a real estate mortgage or deed of trust or by an agreement for the
6 sale of real estate if the real estate securing the evidences of
7 indebtedness are parcels of real estate the sale of which requires
8 the subdivision in which the parcels are located to be registered
9 under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701
10 et seq., as the act existed on July 20, 2002;

11 (6) Any transaction by an executor, personal
12 representative, administrator, sheriff, marshal, receiver,
13 guardian, or conservator;

14 (7) Any transaction executed by a bona fide pledgee
15 without any purpose of evading the Securities Act of Nebraska;

16 (8) Any offer or sale to a bank, savings institution,
17 trust company, insurance company, investment company as defined
18 in the Investment Company Act of 1940, pension or profit-sharing
19 trust, or other financial institution or institutional buyer, to
20 an individual accredited investor, or to a broker-dealer, whether
21 the purchaser is acting for itself or in some fiduciary capacity.
22 For purposes of this subdivision, the term "individual accredited
23 investor" means (a) any director, executive officer, or general
24 partner of the issuer of the securities being offered or sold, or
25 any director, executive officer, or general partner of a general

1 partner of that issuer, (b) any manager of a limited liability
2 company that is the issuer of the securities being offered or
3 sold, (c) any natural person whose individual net worth, or joint
4 net worth with that person's spouse, at the time of his or her
5 purchase, exceeds one million dollars, or (d) any natural person
6 who had an individual income in excess of two hundred thousand
7 dollars in each of the two most recent years or joint income with
8 that person's spouse in excess of three hundred thousand dollars in
9 each of those years and has a reasonable expectation of reaching
10 the same income level in the current year;

11 (9) Any transaction pursuant to an offering in which
12 sales are made to not more than fifteen persons, other than those
13 designated in subdivisions (8), (11), and (17) of this section, in
14 this state during any period of twelve consecutive months if (a)
15 the seller reasonably believes that all the buyers are purchasing
16 for investment, (b) no commission or other remuneration is paid or
17 given directly or indirectly for soliciting any prospective buyer
18 except to a registered agent of a registered broker-dealer, (c)
19 a notice generally describing the terms of the transaction and
20 containing a representation that the conditions of this exemption
21 are met is filed by the seller with the director within thirty days
22 after the first sale for which this exemption is claimed, except
23 that failure to give such notice may be cured by an order issued by
24 the director in his or her discretion, and (d) no general or public
25 advertisements or solicitations are made;

1 (10) Any offer or sale of a preorganization certificate
2 or subscription if (a) no commission or other remuneration is paid
3 or given directly or indirectly for soliciting any prospective
4 subscriber, (b) the number of subscribers does not exceed ten, and
5 (c) no payment is made by any subscriber;

6 (11) Any transaction pursuant to an offer to existing
7 security holders of the issuer, including persons who at the
8 time of the transaction are holders of convertible securities,
9 nontransferable warrants, or transferable warrants exercisable
10 within not more than ninety days of their issuance, if (a) no
11 commission or other remuneration, other than a standby commission,
12 is paid or given directly or indirectly for soliciting any security
13 holder in this state or (b) the issuer first files a notice
14 specifying the terms of the offer and the director does not by
15 order disallow the exemption within the next five full business
16 days;

17 (12) Any offer, but not a sale, of a security for which
18 registration statements have been filed under both the Securities
19 Act of Nebraska and the Securities Act of 1933 if no stop order or
20 refusal order is in effect and no public proceeding or examination
21 looking toward such an order is pending under either the Securities
22 Act of Nebraska or the Securities Act of 1933;

23 (13) The issuance of any stock dividend, whether the
24 corporation distributing the dividend is the issuer of the stock
25 or not, if nothing of value is given by the stockholders for the

1 distribution other than the surrender of a right to a cash dividend
2 when the stockholder can elect to take a dividend in cash or stock;

3 (14) Any transaction incident to a right of conversion
4 or a statutory or judicially approved reclassification,
5 recapitalization, reorganization, quasi-reorganization, stock
6 split, reverse stock split, merger, consolidation, or sale of
7 assets;

8 (15) Any transaction involving the issuance for cash
9 of any evidence of ownership interest or indebtedness by an
10 agricultural cooperative formed as a corporation under section
11 21-1301 or 21-1401 if the issuer has first filed a notice of
12 intention to issue with the director and the director has not by
13 order, mailed to the issuer by certified or registered mail within
14 ten business days after receipt thereof, disallowed the exemption;

15 (16) Any transaction in this state not involving a public
16 offering when (a) there is no general or public advertising or
17 solicitation, (b) no commission or remuneration is paid directly
18 or indirectly for soliciting any prospective buyer, except to
19 a registered agent of a registered broker-dealer or registered
20 issuer-dealer, (c) a notice generally describing the terms of the
21 transaction and containing a representation that the conditions of
22 this exemption are met is filed by the seller with the director
23 within thirty days after the first sale for which this exemption
24 is claimed, except that failure to give such notice may be cured
25 by an order issued by the director in his or her discretion, (d)

1 a filing fee of two hundred dollars is paid at the time of filing
2 the notice, and (e) any such transaction is effected in accordance
3 with rules and regulations adopted and promulgated by the director
4 relating to this section when the director finds in adopting and
5 promulgating such rules and regulations that the applicability of
6 sections 8-1104 to 8-1107 is not necessary or appropriate in the
7 public interest or for the protection of investors. For purposes
8 of this subdivision, not involving a public offering means any
9 offering in which the seller has reason to believe that the
10 securities purchased are taken for investment and in which each
11 offeree, by reason of his or her knowledge about the affairs of
12 the issuer or otherwise, does not require the protections afforded
13 by registration under sections 8-1104 to 8-1107 in order to make a
14 reasonably informed judgment with respect to such investment;

15 (17) The issuance of any investment contract issued in
16 connection with an employee's stock purchase, savings, pension,
17 profit-sharing, or similar benefit plan if no commission or other
18 remuneration is paid or given directly or indirectly for soliciting
19 any prospective buyer except to a registered agent of a registered
20 broker-dealer;

21 (18) Any interest in a common trust fund or similar fund
22 maintained by a bank or trust company organized and supervised
23 under the laws of any state or a bank organized under the laws of
24 the United States for the collective investment and reinvestment
25 of funds contributed to such common trust fund or similar fund

1 by the bank or trust company in its capacity as trustee, personal
2 representative, administrator, or guardian and any interest in a
3 collective investment fund or similar fund maintained by the bank
4 or trust company for the collective investment of funds contributed
5 to such collective investment fund or similar fund by the bank or
6 trust company in its capacity as trustee or agent which interest
7 is issued in connection with an employee's savings, pension,
8 profit-sharing, or similar benefit plan or a self-employed person's
9 retirement plan, if a notice generally describing the terms of the
10 collective investment fund or similar fund is filed by the bank
11 or trust company with the director within thirty days after the
12 establishment of the fund. Failure to give the notice may be cured
13 by an order issued by the director in his or her discretion;

14 (19) Any transaction in which a United States Series EE
15 Savings Bond is given or delivered with or as a bonus on account of
16 any purchase of any item or thing;

17 (20) Any transaction in this state not involving a
18 public offering by a Nebraska issuer selling solely to Nebraska
19 residents, when (a) any such transaction is effected in accordance
20 with rules and regulations adopted and promulgated by the director
21 relating to this section when the director finds in adopting and
22 promulgating such rules and regulations that the applicability
23 of sections 8-1104 to 8-1107 is not necessary or appropriate in
24 the public interest or for the protection of investors, (b) no
25 commission or remuneration is paid directly or indirectly for

1 soliciting any prospective buyer, except to a registered agent of a
2 registered broker-dealer or registered issuer-dealer, (c) a notice
3 generally describing the terms of the transaction and containing
4 a representation that the conditions of this exemption are met is
5 filed by the seller with the director no later than twenty days
6 prior to any sales for which this exemption is claimed, except that
7 failure to give such notice may be cured by an order issued by the
8 director in his or her discretion, (d) a filing fee of two hundred
9 dollars is paid at the time of filing the notice, and (e) there is
10 no general or public advertising or solicitation; ~~or~~

11 (21) Any transaction by a person who is an organization
12 described in section 501(c)(3) of the Internal Revenue Code as
13 defined in section 49-801.01 involving an offering of interests in
14 a fund described in section 3(c)(10)(B) of the Investment Company
15 Act of 1940 solely to persons who are organizations described
16 in section 501(c)(3) of the Internal Revenue Code as defined
17 in section 49-801.01 when (a) there is no general or public
18 advertising or solicitation, (b) a notice generally describing
19 the terms of the transaction and containing a representation that
20 the conditions of this exemption are met is filed by the seller
21 with the director within thirty days after the first sale for
22 which this exemption is claimed, except that failure to give such
23 notice may be cured by an order issued by the director in his
24 or her discretion, and (c) any such transaction is effected by a
25 trustee, director, officer, employee, or volunteer of the seller

1 who is either a volunteer or is engaged in the overall fundraising
2 activities of a charitable organization and receives no commission
3 or other special compensation based on the number or the value of
4 interests sold in the fund; or

5 ~~(21)~~ (22) Any offer or sale of any viatical settlement
6 contract or any fractionalized or pooled interest therein in a
7 transaction that meets all of the following criteria:

8 (a) Sales of such securities are made only to the
9 following purchasers:

10 (i) A natural person who, either individually or jointly
11 with the person's spouse, (A) has a minimum net worth of two
12 hundred fifty thousand dollars and had taxable income in excess of
13 one hundred twenty-five thousand dollars in each of the two most
14 recent years and has a reasonable expectation of reaching the same
15 income level in the current year or (B) has a minimum net worth
16 of five hundred thousand dollars. Net worth shall be determined
17 exclusive of home, home furnishings, and automobiles;

18 (ii) A corporation, partnership, or other organization
19 specifically formed for the purpose of acquiring securities offered
20 by the issuer in reliance upon this exemption if each equity owner
21 of the corporation, partnership, or other organization is a person
22 described in subdivision ~~(21)~~ (22) of this section;

23 (iii) A pension or profit-sharing trust of the issuer,
24 a self-employed individual retirement plan, or an individual
25 retirement account, if the investment decisions made on behalf

1 of the trust, plan, or account are made solely by persons described
2 in subdivision ~~(21)~~ (22) of this section; or

3 (iv) An organization described in section 501(c)(3)
4 of the Internal Revenue Code as defined in section 49-801.01,
5 or a corporation, Massachusetts or similar business trust, or
6 partnership with total assets in excess of five million dollars
7 according to its most recent audited financial statements;

8 (b) The amount of the investment of any purchaser, except
9 a purchaser described in subdivision (a)(ii) of this subdivision,
10 does not exceed five percent of the net worth, as determined by
11 this subdivision, of that purchaser;

12 (c) Each purchaser represents that the purchaser is
13 purchasing for the purchaser's own account or trust account, if
14 the purchaser is a trustee, and not with a view to or for sale in
15 connection with a distribution of the security;

16 (d)(i) Each purchaser receives, on or before the date the
17 purchaser remits consideration pursuant to the purchase agreement,
18 the following information in writing:

19 (A) The name, principal business and mailing addresses,
20 and telephone number of the issuer;

21 (B) The suitability standards for prospective purchasers
22 as set forth in subdivision (a) of this subdivision;

23 (C) A description of the issuer's type of business
24 organization and the state in which the issuer is organized or
25 incorporated;

1 (D) A brief description of the business of the issuer;

2 (E) If the issuer retains ownership or becomes the
3 beneficiary of the insurance policy, an audit report from an
4 independent certified public accountant together with a balance
5 sheet and related statements of income, retained earnings, and cash
6 flows that reflect the issuer's financial position, the results
7 of the issuer's operations, and the issuer's cash flows as of a
8 date within fifteen months before the date of the initial issuance
9 of the securities described in this subdivision. The financial
10 statements shall be prepared in conformity with generally accepted
11 accounting principles. If the date of the audit report is more than
12 one hundred twenty days before the date of the initial issuance
13 of the securities described in this subdivision, the issuer shall
14 provide unaudited interim financial statements;

15 (F) The names of all directors, officers, partners,
16 members, or trustees of the issuer;

17 (G) A description of any order, judgment, or decree
18 that is final as to the issuing entity of any state, federal, or
19 foreign governmental agency or administrator, or of any state,
20 federal, or foreign court of competent jurisdiction (I) revoking,
21 suspending, denying, or censuring for cause any license, permit,
22 or other authority of the issuer or of any director, officer,
23 partner, member, trustee, or person owning or controlling, directly
24 or indirectly, ten percent or more of the outstanding interest
25 or equity securities of the issuer, to engage in the securities,

1 commodities, franchise, insurance, real estate, or lending business
2 or in the offer or sale of securities, commodities, franchises,
3 insurance, real estate, or loans, (II) permanently restraining,
4 enjoining, barring, suspending, or censuring any such person from
5 engaging in or continuing any conduct, practice, or employment
6 in connection with the offer or sale of securities, commodities,
7 franchises, insurance, real estate, or loans, (III) convicting
8 any such person of, or pleading nolo contendere by any such
9 person to, any felony or misdemeanor involving a security,
10 commodity, franchise, insurance, real estate, or loan, or any
11 aspect of the securities, commodities, franchise, insurance, real
12 estate, or lending business, or involving dishonesty, fraud,
13 deceit, embezzlement, fraudulent conversion, or misappropriation of
14 property, or (IV) holding any such person liable in a civil action
15 involving breach of a fiduciary duty, fraud, deceit, embezzlement,
16 fraudulent conversion, or misappropriation of property. This
17 subdivision does not apply to any order, judgment, or decree that
18 has been vacated or overturned or is more than ten years old;

19 (H) Notice of the purchaser's right to rescind or cancel
20 the investment and receive a refund;

21 (I) A statement to the effect that any projected rate of
22 return to the purchaser from the purchase of a viatical settlement
23 contract or any fractionalized or pooled interest therein is based
24 on an estimated life expectancy for the person insured under the
25 life insurance policy; that the return on the purchase may vary

1 substantially from the expected rate of return based upon the
2 actual life expectancy of the insured that may be less than, may
3 be equal to, or may greatly exceed the estimated life expectancy;
4 and that the rate of return would be higher if the actual life
5 expectancy were less than, and lower if the actual life expectancy
6 were greater than, the estimated life expectancy of the insured at
7 the time the viatical settlement contract was closed;

8 (J) A statement that the purchaser should consult with
9 his or her tax advisor regarding the tax consequences of the
10 purchase of the viatical settlement contract or any fractionalized
11 or pooled interest therein; and

12 (K) Any other information as may be prescribed by rule of
13 the director; and

14 (ii) The purchaser receives in writing at least five
15 business days prior to closing the transaction:

16 (A) The name, address, and telephone number of the
17 issuing insurance company and the name, address, and telephone
18 number of the state or foreign country regulator of the insurance
19 company;

20 (B) The total face value of the insurance policy and the
21 percentage of the insurance policy the purchaser will own;

22 (C) The insurance policy number, issue date, and type;

23 (D) If a group insurance policy, the name, address, and
24 telephone number of the group and, if applicable, the material
25 terms and conditions of converting the policy to an individual

1 policy, including the amount of increased premiums;

2 (E) If a term insurance policy, the term and the name,
3 address, and telephone number of the person who will be responsible
4 for renewing the policy if necessary;

5 (F) That the insurance policy is beyond the state statute
6 for contestability and the reason therefor;

7 (G) The insurance policy premiums and terms of premium
8 payments;

9 (H) The amount of the purchaser's money that will be set
10 aside to pay premiums;

11 (I) The name, address, and telephone number of the person
12 who will be the insurance policyowner and the person who will be
13 responsible for paying premiums;

14 (J) The date on which the purchaser will be required to
15 pay premiums and the amount of the premium, if known; and

16 (K) Any other information as may be prescribed by rule of
17 the director;

18 (e) The purchaser may rescind or cancel the purchase for
19 any reason by giving written notice of rescission or cancellation
20 to the issuer or the issuer's agent within (i) fifteen calendar
21 days after the date the purchaser remits the required consideration
22 or receives the disclosure required under subdivision (d)(i) of
23 this subdivision and (ii) five business days after the date
24 the purchaser receives the disclosure required by subdivision
25 (d)(ii) of this subdivision. No specific form is required for the

1 rescission or cancellation. The notice is effective when personally
2 delivered, deposited in the United States mail, or deposited with a
3 commercial courier or delivery service. The issuer shall refund all
4 the purchaser's money within seven calendar days after receiving
5 the notice of rescission or cancellation;

6 (f) A notice of the issuer's intent to sell securities
7 pursuant to this subdivision, signed by a duly authorized officer
8 of the issuer and notarized, together with a filing fee of two
9 hundred dollars, is filed with the Department of Banking and
10 Finance before any offers or sales of securities are made under
11 this subdivision. Such notice shall include:

12 (i) The issuer's name, the issuer's type of organization,
13 the state in which the issuer is organized, the date the issuer
14 intends to begin selling securities within or from this state, and
15 the issuer's principal business;

16 (ii) A consent to service of process; and

17 (iii) An audit report of an independent certified public
18 accountant together with a balance sheet and related statements of
19 income, retained earnings and cash flows that reflect the issuer's
20 financial position, the results of the issuer's operations, and the
21 issuer's cash flows as of a date within fifteen months before the
22 date of the notice prescribed in this subdivision. The financial
23 statements shall be prepared in conformity with generally accepted
24 accounting principles and shall be examined according to generally
25 accepted auditing standards. If the date of the audit report is

1 more than one hundred twenty days before the date of the notice
2 prescribed in this subdivision, the issuer shall provide unaudited
3 interim financial statements;

4 (g) No commission or remuneration is paid directly or
5 indirectly for soliciting any prospective purchaser, except to
6 a registered agent of a registered broker-dealer or registered
7 issuer-dealer; and

8 (h) At least ten days before use within this state,
9 the issuer files with the department all advertising and sales
10 materials that will be published, exhibited, broadcast, or
11 otherwise used, directly or indirectly, in the offer or sale of a
12 viatical settlement contract in this state.

13 The director may by order deny or revoke the exemption
14 specified in subdivision (2) of this section with respect to a
15 specific security. Upon the entry of such an order, the director
16 shall promptly notify all registered broker-dealers that it has
17 been entered and of the reasons therefor and that within fifteen
18 business days of the receipt of a written request the matter will
19 be set down for hearing. If no hearing is requested within fifteen
20 business days of the issuance of the order and none is ordered by
21 the director, the order shall automatically become a final order
22 and shall remain in effect until it is modified or vacated by the
23 director. If a hearing is requested or ordered, the director, after
24 notice of and opportunity for hearing to all interested persons,
25 shall enter his or her written findings of fact and conclusions of

1 law and may affirm, modify, or vacate the order. No such order may
2 operate retroactively. No person may be considered to have violated
3 the provisions of the Securities Act of Nebraska by reason of any
4 offer or sale effected after the entry of any such order if he or
5 she sustains the burden of proof that he or she did not know and in
6 the exercise of reasonable care could not have known of the order.
7 In any proceeding under the act, the burden of proving an exemption
8 from a definition shall be upon the person claiming it.

9 Sec. 21. Section 8-1601, Revised Statutes Cumulative
10 Supplement, 2004, is amended to read:

11 8-1601 For purposes of sections 8-1601 to 8-1605, unless
12 the context otherwise requires:

13 (1) Bank has the same meaning as in section 8-909;

14 (2) Bank holding company has the same meaning as in
15 section 8-909;

16 (3) Bankers Banker's bank means a bank formed pursuant to
17 section 8-1602;

18 ~~(2)~~ (4) Department means the Department of Banking and
19 Finance;

20 ~~(3)~~ (5) Foreign bank holding company has the same meaning
21 as out-of-state bank holding company in section 8-909;

22 (6) Foreign banker's bankers bank means a bank which is
23 chartered in a foreign state and which is:

24 (a) Insured by the Federal Deposit Insurance Corporation;

25 (b) Owned substantially by banks in the state in which

1 the bank was chartered; and

2 (c) Directly and through its subsidiaries engaged
3 exclusively in providing services for other banks and their
4 officers, directors, and employees;

5 ~~(4)~~ (7) Foreign state means any state of the United
6 States other than the State of Nebraska, any territory of the
7 United States, Puerto Rico, Guam, American Samoa, the Trust
8 Territory of the Pacific Islands, the Virgin Islands, or the
9 District of Columbia; and

10 ~~(5)~~ (8) Owned substantially means at least eighty percent
11 of the outstanding voting stock is owned.

12 Sec. 22. Section 8-1602, Revised Statutes Cumulative
13 Supplement, 2004, is amended to read:

14 8-1602 A ~~banker's~~ bankers bank may be formed with
15 the approval of the department and subject to requirements and
16 procedures for the issuance of a new bank charter or the transfer
17 of an existing bank charter as provided in the Nebraska Banking
18 Act. A ~~banker's~~ bankers bank shall be a bank which is:

19 (1) Insured by the Federal Deposit Insurance Corporation;

20 (2) Owned substantially by other Nebraska banks, bank
21 holding companies, foreign bank holding companies, or a combination
22 of such entities; and

23 (3) Directly and through all its subsidiaries engaged
24 exclusively in providing services for other banks and their
25 officers, directors, and employees.

1 Sec. 23. Section 8-1605, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 8-1605 A bank may subscribe to, invest in, buy, or own
4 voting stock of one or more ~~banker's~~ bankers banks, and foreign
5 ~~banker's~~ bankers banks, bank holding companies, or foreign bank
6 holding companies of such bankers bank or foreign bankers bank in
7 an amount not to exceed five percent of any class of voting stock
8 of each such ~~banker's~~ bankers bank, ~~or~~ foreign ~~banker's~~ bankers
9 bank, bank holding company, or foreign bank holding company of
10 such bankers bank or foreign bankers bank. In no event shall such
11 bank's holdings of the stock of a ~~banker's~~ bankers bank, and a
12 foreign ~~banker's~~ bankers bank, bank holding company, or foreign
13 bank holding company of such bankers bank or foreign bankers bank
14 exceed ten percent of the capital stock and paid-in and unimpaired
15 surplus of the bank holding such stock.

16 Sec. 24. Section 21-17,115, Revised Statutes Supplement,
17 2005, is amended to read:

18 21-17,115 Notwithstanding any of the other provisions of
19 the Credit Union Act or any other Nebraska statute, any credit
20 union incorporated under the laws of the State of Nebraska and
21 organized under the provisions of the act shall have all the
22 rights, powers, privileges, benefits, and immunities which may
23 be exercised as of ~~March 23, 2005~~ the operative date of this
24 section, by a federal credit union doing business in Nebraska on
25 the condition that such rights, powers, privileges, benefits, and

1 immunities shall not relieve such credit union from payment of
2 state taxes assessed under any applicable laws of this state.

3 Sec. 25. Section 45-335, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-335 For purposes of the Nebraska Installment Sales
6 Act, unless the context otherwise requires:

7 (1) Goods means all personal property, except money or
8 things in action, and includes goods which, at the time of sale or
9 subsequently, are so affixed to realty as to become part thereof
10 whether or not severable therefrom;

11 (2) Services means work, labor, and services of any kind
12 performed in conjunction with an installment sale but does not
13 include services for which the prices charged are required by law
14 to be established and regulated by the government of the United
15 States or any state;

16 (3) Buyer means a person who buys goods or obtains
17 services from a seller in an installment sale;

18 (4) Seller means a person who sells goods or furnishes
19 services to a buyer under an installment sale;

20 (5) Installment sale means any transaction, whether or
21 not involving the creation or retention of a security interest, in
22 which a buyer acquires goods or services from a seller pursuant to
23 an agreement which provides for a time-price differential and under
24 which the buyer agrees to pay all or part of the time-sale price in
25 one or more installments and within one hundred forty-five months,

1 except that installment contracts for the purchase of mobile
2 homes may exceed such one-hundred-forty-five-month limitation.
3 Installment sale does not include a consumer rental purchase
4 agreement defined in and regulated by the Consumer Rental Purchase
5 Agreement Act;

6 (6) Installment contract means an agreement entered into
7 in this state evidencing an installment sale except those otherwise
8 provided for in separate acts;

9 (7) Cash price or cash sale price means the price stated
10 in an installment contract for which the seller would have sold or
11 furnished to the buyer and the buyer would have bought or acquired
12 from the seller goods or services which are the subject matter
13 of the contract if such sale had been a sale for cash instead of
14 an installment sale. It may include the cash price of accessories
15 or services related to the sale such as delivery, installation,
16 alterations, modifications, and improvements and may include taxes
17 to the extent imposed on the cash sale;

18 (8) Basic time price means the cash sale price of the
19 goods or services which are the subject matter of an installment
20 contract plus the amount included therein, if a separate identified
21 charge is made therefor and stated in the contract, for insurance,
22 registration, certificate of title, and license fees, filing fees,
23 an origination fee, and fees and charges prescribed by law which
24 actually are or will be paid to public officials for determining
25 the existence of or for perfecting, releasing, or satisfying any

1 security related to the credit transaction or any charge for
2 nonfiling insurance if such charge does not exceed the amount of
3 fees and charges prescribed by law which would have been paid to
4 public officials for filing, perfecting, releasing, and satisfying
5 any security related to the credit transaction and less the amount
6 of the buyer's downpayment in money or goods or both;

7 (9) Time-price differential, however denominated or
8 expressed, means the amount, as limited in the Nebraska Installment
9 Sales Act, to be added to the basic time price;

10 (10) Time-sale price means the total of the basic time
11 price of the goods or services, the amount of the buyer's
12 downpayment in money or goods or both, and the time-price
13 differential;

14 (11) Sales finance company means a person purchasing one
15 or more installment contracts from one or more sellers. Sales
16 finance company includes, but is not limited to, a financial
17 institution or installment loan licensee, if so engaged;

18 (12) Director means the Director of Banking and Finance;

19 and

20 (13) Financial institution has the same meaning as in
21 section 8-101; -

22 (14) Debt cancellation contract means a loan term
23 or contractual arrangement modifying loan terms under which a
24 financial institution agrees to cancel all or part of a buyer's
25 obligation to repay an extension of credit from the financial

1 institution upon the occurrence of a specified event. The debt
2 cancellation contract may be separate from or a part of other loan
3 documents. The term debt cancellation contract does not include
4 loan payment deferral arrangements in which the triggering event is
5 the buyer's unilateral election to defer repayment or the financial
6 institution's unilateral decision to allow a deferral of repayment;
7 and

8 (15) Debt suspension contract means a loan term or
9 contractual arrangement modifying loan terms under which a
10 financial institution agrees to suspend all or part of a buyer's
11 obligation to repay an extension of credit from the financial
12 institution upon the occurrence of a specified event. The debt
13 suspension contract may be separate from or a part of other loan
14 documents. The term debt suspension contract does not include loan
15 payment deferral arrangements in which the triggering event is the
16 buyer's unilateral election to defer repayment or the financial
17 institution's unilateral decision to allow a deferral of repayment.

18 Sec. 26. Section 45-336, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 45-336 (1) Each retail installment contract shall be in
21 writing, shall be signed by both the buyer and the seller, and
22 shall contain the following items and a copy thereof shall be
23 delivered to the buyer at the time the instrument is signed,
24 except for contracts made in conformance with section 45-340: (a)
25 The cash sale price; (b) the amount of the buyer's downpayment,

1 and whether made in money or goods, or partly in money and
2 partly in goods, including a brief description of any goods traded
3 in; (c) the difference between subdivisions (a) and (b) of this
4 subsection; (d) the amount included for insurance if a separate
5 charge is made therefor, specifying the types of coverages; (e)
6 the amount included for a debt cancellation contract or a debt
7 suspension contract if the debt cancellation contract or debt
8 suspension contract is a contract of a financial institution, such
9 contract is sold directly by such financial institution or by an
10 unaffiliated, nonexclusive agent of such financial institution in
11 accordance with 12 C.F.R. part 37, as such part existed on January
12 1, 2006, and the financial institution is responsible for the
13 unaffiliated, nonexclusive agent's compliance with such part, and a
14 separate charge is made therefor; (f) the basic time price, which
15 is the sum of subdivisions (c) and (d) of this subsection; ~~(f)~~ (g)
16 the time-price differential; ~~(g)~~ (h) the amount of the time-price
17 balance, which is the sum of subdivisions ~~(e)~~ and (f) and (g)
18 of this subsection, payable in installments by the buyer to the
19 seller; ~~(h)~~ (i) the number, amount, and due date or period of each
20 installment; and ~~(i)~~ (j) the time-sales price.

21 (2) The contract shall contain substantially the
22 following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT
23 BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED
24 TO A COPY OF THE CONTRACT YOU SIGN.

25 (3) The items listed in subsection (1) of this section

1 need not be stated in the sequence or order set forth in such
2 subsection. Additional items may be included to explain the
3 computations made in determining the amount to be paid by the
4 buyer. No installment contract shall be signed by the buyer or
5 proffered by seller when it contains blank spaces to be filled in
6 after execution, except that if delivery of the goods or services
7 is not made at the time of the execution of the contract, the
8 identifying numbers or marks of the goods, or similar information,
9 and the due date of the first installment may be inserted in the
10 contract after its execution.

11 (4) If a seller proffers an installment contract as part
12 of a transaction which delays or cancels, or promises to delay or
13 cancel, the payment of the time-price differential on the contract
14 if the buyer pays the basic time price, cash price, or cash sale
15 price within a certain period of time, the seller shall, in clear
16 and conspicuous writing, either within the installment contract or
17 in a separate document, inform the buyer of the exact date by
18 which the buyer must pay the basic time price, cash price, or
19 cash sale price in order to delay or cancel the payment of the
20 time-price differential. The seller or any subsequent purchaser of
21 the installment contract, including a sales finance company, shall
22 not be allowed to change such date.

23 (5) Upon written request from the buyer, the holder of an
24 installment contract shall give or forward to the buyer a written
25 statement of the dates and amounts of payments and the total

1 amount unpaid under such contract. A buyer shall be given a written
2 receipt for any payment when made in cash.

3 (6) After payment of all sums for which the buyer is
4 obligated under a contract, the holder shall deliver or mail to
5 the buyer at his or her last-known address one or more good and
6 sufficient instruments or copies thereof to acknowledge payment in
7 full and shall release all security in the goods and mark canceled
8 and return to the buyer the original agreement or copy thereof or
9 instruments or copies thereof signed by the buyer. For purposes
10 of this section, a copy shall meet the requirements of section
11 25-12,112.

12 Sec. 27. Section 45-701, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 45-701 Sections 45-701 to 45-721 and section 35 of this
15 act shall be known and may be cited as the Mortgage Bankers
16 Registration and Licensing Act.

17 Sec. 28. Section 45-702, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 45-702 For purposes of the Mortgage Bankers Registration
20 and Licensing Act:

21 (1) Borrower means the mortgagor or mortgagors under a
22 real estate mortgage or the trustor or trustors under a deed of
23 trust;

24 (2) Department means the Department of Banking and
25 Finance;

1 (3) Director means the Director of Banking and Finance;

2 (4) Financial institution means any person organized
3 or chartered under the laws of this state, any other state,
4 or the United States relating to banks, savings institutions,
5 trust companies, savings and loan associations, or credit unions.
6 Financial institution also means an industrial loan and investment
7 company chartered under the laws of any other state and subject to
8 similar supervision and regulation as a bank chartered under the
9 laws of this state;

10 (5) Licensee means any person licensed under the act;

11 (6) Mortgage banker means any person not exempt under
12 section 45-703 who, for compensation or gain or in the expectation
13 of compensation or gain, directly or indirectly makes, originates,
14 services, negotiates, acquires, sells, arranges for, or offers to
15 make, originate, service, negotiate, acquire, sell, or arrange for
16 ten or more mortgage loans in a calendar year;

17 (7) Mortgage banking business means any person who
18 employs a mortgage banker or mortgage bankers or who directly
19 or indirectly makes, negotiates, acquires, sells, arranges for, or
20 offers to make, originate, service, negotiate, acquire, sell, or
21 arrange for ten or more mortgage loans in a calendar year for
22 compensation or gain or in the expectation of compensation or gain;

23 (8) Mortgage loan means any loan or extension of credit
24 secured by a lien on real property, including a refinancing of a
25 contract of sale or an assumption or refinancing of a prior loan or

1 extension of credit;

2 (9) Offer means every attempt to provide, offer to
3 provide, or solicitation to provide a mortgage loan or any form of
4 mortgage banking business. Offer includes, but is not limited to,
5 all general and public advertising, whether made in print, through
6 electronic media, or by the Internet;

7 (10) Person means an association, joint venture,
8 joint-stock company, partnership, limited partnership, limited
9 liability company, business corporation, nonprofit corporation,
10 individual, or any group of individuals however organized;

11 ~~(10)~~ (11) Real property means an owner-occupied
12 single-family, two-family, three-family, or four-family dwelling
13 which is located in this state, which is occupied, used, or
14 intended to be occupied or used for residential purposes, and which
15 is, or is intended to be, permanently affixed to the land;

16 ~~(11)~~ (12) Registered bank holding company means any bank
17 holding company registered with the department pursuant to the
18 Nebraska Bank Holding Company Act of 1995;

19 ~~(12)~~ (13) Registrant means a person registered pursuant
20 to section 45-704; and

21 ~~(13)~~ (14) Service means accepting payments or maintenance
22 of escrow accounts in the regular course of business in connection
23 with a mortgage loan.

24 Sec. 29. Section 45-706, Revised Statutes Supplement,
25 2005, is amended to read:

1 45-706 (1) Upon the filing of an application for a
2 license, if the director finds that the character and general
3 fitness of the applicant, the members thereof if the applicant
4 is a partnership, limited liability company, association, or other
5 organization, and the officers, directors, and principal employees
6 if the applicant is a corporation are such that the business
7 will be operated honestly, soundly, and efficiently in the public
8 interest consistent with the purposes of the Mortgage Bankers
9 Registration and Licensing Act, the director shall issue a license
10 as a mortgage banker to the applicant. The director shall approve
11 or deny an application for a license within ninety days after the
12 filing of the application and delivery of the bond required under
13 section 45-709 and payment of the required fee.

14 (2) If the director determines that the license should be
15 denied, the director shall notify the applicant in writing of the
16 denial and of the reasons for the denial. The director shall not
17 deny an application for a license because of the failure to submit
18 information required under the act or rules and regulations adopted
19 and promulgated under the act without first giving the applicant
20 an opportunity to correct the deficiency by supplying the missing
21 information. A decision of the director denying a license pursuant
22 to the act may be appealed, and the appeal shall be in accordance
23 with the Administrative Procedure Act. The director may deny an
24 application for a license if an officer, director, shareholder
25 owning five percent or more of the voting shares of the applicant,

1 partner, or member was convicted of, pleaded guilty to, or was
2 found guilty after a plea of nolo contendere to (a) a misdemeanor
3 under any state or federal law which involves dishonesty or fraud
4 or which involves any aspect of the mortgage banking business,
5 financial institution business, or installment loan business or (b)
6 any felony under state or federal law.

7 (3) All initial licenses shall remain in full force and
8 effect until the next succeeding March 1. Thereafter licenses may
9 be renewed annually by filing with the director an application for
10 renewal containing such information as the director may require
11 to indicate any material change in the information contained
12 in the original application or succeeding renewal applications,
13 including the information required by subsection (3) of section
14 45-705. For the annual renewal of an original license to conduct
15 mortgage banking business under the Mortgage Bankers Registration
16 and Licensing Act, the fee shall be two hundred dollars.

17 (4) The director may require a licensee to maintain a
18 minimum net worth, proven by an audit conducted by a certified
19 public accountant, if the director determines that the financial
20 condition of the licensee warrants such a requirement or that the
21 requirement is in the public interest.

22 Sec. 30. Section 45-707, Revised Statutes Supplement,
23 2005, is amended to read:

24 45-707 (1) The director may, following a hearing under
25 the Administrative Procedure Act, suspend or revoke any license

1 issued under the Mortgage Bankers Registration and Licensing Act.
2 The director may also impose an administrative fine for each
3 separate violation of the act if the director finds:

4 (a) The licensee has materially violated or demonstrated
5 a continuing pattern of violating the Mortgage Bankers Registration
6 and Licensing Act, rules and regulations adopted and promulgated
7 under the act, any order, including a cease and desist order,
8 issued under the act, or any other state or federal law applicable
9 to the conduct of its business;

10 (b) A fact or condition exists which, if it had existed
11 at the time of the original application for the license, would have
12 warranted the director to deny the application;

13 (c) The licensee has violated a voluntary consent or
14 compliance agreement which had been entered into with the director;

15 (d) The licensee has made or caused to be made, in
16 any document filed with the director or in any proceeding under
17 the Mortgage Bankers Registration and Licensing Act, any statement
18 which was, at the time and in light of the circumstances under
19 which it was made, false or misleading in any material respect or
20 suppressed or withheld from the director any information which, if
21 submitted by the licensee, would have resulted in denial of the
22 license application;

23 (e) The licensee has refused to permit an examination
24 by the director of the licensee's books and affairs pursuant to
25 subsection (1) of section 45-710 or has refused or failed to comply

1 with subsection (2) of section 45-710 after written notice of
2 the violation by the director. Each day the licensee continues in
3 violation of this subdivision after such written notice constitutes
4 a separate violation;

5 (f) The licensee has failed to maintain records as
6 required by subdivision (8) of section 45-711 or as otherwise
7 required following written notice of the violation by the director.
8 Each day the licensee continues in violation of this subdivision
9 after such written notice constitutes a separate violation;

10 (g) The licensee knowingly has employed any individual
11 or knowingly has maintained a contractual relationship with any
12 individual acting as an agent, if such individual has been
13 convicted of, pleaded guilty to, or was found guilty after a
14 plea of nolo contendere to (i) a misdemeanor under any state or
15 federal law which involves dishonesty or fraud or which involves
16 any aspect of the mortgage banking business, financial institution
17 business, or installment loan business or (ii) any felony under
18 state or federal law;

19 (h) The licensee knowingly has employed any individual
20 or knowingly has maintained a contractual relationship with any
21 individual acting as an agent, if such individual, while previously
22 associated in any other capacity with another licensee, was the
23 subject of a complaint under the Mortgage Bankers Registration and
24 Licensing Act and the complaint was not resolved at the time the
25 individual became employed by, or began acting as an agent for,

1 the licensee and the licensee with reasonable diligence could have
2 discovered the existence of such complaint;

3 (i) The licensee has violated the written restrictions or
4 conditions under which the license was issued;

5 (j) The licensee, or if the licensee is a business
6 entity, one of the officers, directors, shareholders, partners, and
7 members, was convicted of, pleaded guilty to, or was found guilty
8 after a plea of nolo contendere to (i) a misdemeanor under any
9 state or federal law which involves dishonesty or fraud or which
10 involves any aspect of the mortgage banking business, financial
11 institution business, or installment loan business or (ii) any
12 felony under state or federal law;

13 (k) The licensee has had a similar license revoked in any
14 other jurisdiction; or

15 (l) The licensee has failed to reasonably supervise any
16 officer, employee, or agent to assure his or her compliance with
17 the act or with any state or federal law applicable to the mortgage
18 banking business.

19 (2) Except as provided in this section, a license shall
20 not be revoked or suspended except after notice and a hearing in
21 accordance with the Administrative Procedure Act.

22 (3) A licensee may voluntarily surrender a license by
23 delivering to the director written notice of the surrender, but a
24 surrender shall not affect civil or criminal liability for acts
25 committed before the surrender or liability for any fines which may

1 be levied against the licensee or any of its officers, directors,
2 shareholders, partners, or members pursuant to section 45-717.01
3 for acts committed before the surrender.

4 (4)(a) If a licensee fails to renew its license as
5 required by section 45-706 and does not voluntarily surrender the
6 license pursuant to this section, the department may issue a notice
7 of expiration of the license to the licensee in lieu of revocation
8 proceedings.

9 (b) If a licensee fails to maintain a surety bond as
10 required by section 45-709, the department may issue a notice of
11 cancellation of the license in lieu of revocation proceedings.

12 (5) Revocation, suspension, surrender, cancellation, or
13 expiration of a license shall not impair or affect the obligation
14 of a preexisting lawful contract between the licensee and any
15 person, including a borrower.

16 (6) Revocation, suspension, cancellation, or expiration
17 of a license shall not affect civil or criminal liability for
18 acts committed before the revocation, suspension, cancellation, or
19 expiration or liability for any fines which may be levied against
20 the licensee or any of its officers, directors, shareholders,
21 partners, or members pursuant to section 45-717.01 for acts
22 committed before the revocation, suspension, cancellation, or
23 expiration.

24 Sec. 31. Section 45-709, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-709 (1) An applicant for a license shall file with
2 the department a surety bond in the amount of ~~fifty~~ one hundred
3 thousand dollars, furnished by a surety company authorized to do
4 business in the State of Nebraska. The bond shall be for the use
5 of the State of Nebraska and any Nebraska resident who may have
6 claims or causes of action against the applicant. Submission of a
7 rider to an existing bond indicating that the required coverage
8 is outstanding and evidencing the beneficiaries required in this
9 section shall satisfy the requirements of this section. The bond
10 or a substitute bond shall remain in effect during all periods of
11 licensing.

12 (2) At any time the director may require the filing of a
13 new or supplemental bond in the form as provided in subsection (1)
14 of this section if he or she determines that the bond filed under
15 subsection (1) of this section is exhausted or is inadequate for
16 any reason, including the financial condition of the licensee or
17 the applicant for a license. The new or supplemental bond shall not
18 exceed one million dollars.

19 (3) Until March 1, 2007, a licensee licensed prior to
20 the operative date of this section may maintain the bond amount
21 such licensee was originally licensed under, unless the licensee
22 is maintaining a bond pursuant to subsection (2) of this section.
23 Licensees maintaining a bond pursuant to subsection (2) of this
24 section shall continue to maintain the amount of that bond until
25 instructed otherwise by the director.

1 Sec. 32. Section 45-714, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 45-714 (1) A licensee, an officer, an employee, or an
4 agent of the licensee shall not:

5 (a) Assess a late charge if all payments due are received
6 before the date upon which late charges are authorized in the
7 underlying mortgage or deed of trust or other loan documents;

8 (b) Delay closing of a mortgage loan for the purpose
9 of increasing interest, costs, fees, or charges payable by the
10 borrower;

11 (c) Misrepresent or conceal material facts or make false
12 promises intended to influence, persuade, or induce an applicant
13 for a mortgage loan or a borrower to take a mortgage loan or cause
14 or contribute to such a misrepresentation by any person acting on a
15 licensee's or any other lender's behalf;

16 (d) Misrepresent to, or conceal from, an applicant for a
17 mortgage loan or a borrower material facts, terms, or conditions of
18 a mortgage loan to which the licensee is a party;

19 (e) Engage in any transaction, practice, or business
20 conduct that is not in good faith or that operates a fraud upon any
21 person in connection with the making of any mortgage loan;

22 (f) Receive compensation for acting as a mortgage banker
23 if the licensee has otherwise acted as a real estate broker
24 or agent in connection with the sale of the real estate which
25 secures the mortgage loan unless the licensee has provided written

1 disclosure to the person from whom compensation is collected
2 that the licensee is receiving compensation both for acting as a
3 mortgage banker and for acting as a real estate broker or agent;

4 (g) Advertise, display, distribute, broadcast, televise,
5 or cause or permit to be advertised, displayed, distributed,
6 broadcasted, or televised, in any manner, including by the
7 Internet, any false, misleading, or deceptive statement or
8 representation with regard to rates, terms, or conditions for a
9 mortgage loan or any false, misleading, or deceptive statement
10 regarding the qualifications of the licensee or of any officer,
11 employee, or agent thereof;

12 (h) Record a lien on real property if money is not
13 available for the immediate disbursal to the borrower unless,
14 before that recording, ~~(i)~~ the licensee (i) informs the borrower in
15 writing of the reason for the delay and of a definite date by which
16 disbursement shall be made and (ii) obtains the borrower's written
17 permission for the delay unless the delay is required by any other
18 state or federal law;

19 (i) Fail to account for or deliver to any person personal
20 property obtained in connection with the mortgage banking business,
21 including, but not limited to, money, funds, deposits, checks,
22 drafts, mortgages, or other documents or things of value which the
23 licensee was not entitled to retain;

24 (j) Fail to disburse, without just cause, any funds in
25 accordance with any agreement connected with the mortgage banking

1 business;

2 (k) Collect fees and charges on funds other than new
3 funds if the licensee makes a mortgage loan to refinance an
4 existing mortgage loan to a current borrower of the licensee
5 within twelve months after the previous mortgage loan made by the
6 licensee;

7 (l) Assess any fees against the borrower other than
8 those which are reasonable and necessary, including actual charges
9 incurred in connection with the making, closing, disbursing,
10 servicing, extending, transferring, or renewing of a loan,
11 including, but not limited to, (i) prepayment charges, (ii)
12 delinquency charges, (iii) premiums for hazard, private mortgage,
13 disability, life, or title insurance, (iv) fees for escrow
14 services, appraisal services, abstracting services, title services,
15 surveys, inspections, credit reports, notary services, and
16 recording of documents, (v) origination fees, (vi) interest on
17 interest after default, and (vii) costs and charges incurred for
18 determining qualification for the loan proceeds and disbursement
19 of the loan proceeds;

20 (m) Allow the borrower to finance, directly or
21 indirectly, (i) any credit life, credit accident, credit health,
22 credit personal property, or credit loss-of-income insurance or
23 debt suspension coverage or debt cancellation coverage, whether or
24 not such coverage is insurance under applicable law, that provides
25 for cancellation of all or part of a borrower's liability in the

1 event of loss of life, health, personal property, or income or in
2 the case of accident written in connection with a mortgage loan
3 or (ii) any life, accident, health, or loss-of-income insurance
4 without regard to the identity of the ultimate beneficiary of such
5 insurance. For purposes of this section, any premiums or charges
6 calculated and paid on a periodic basis that are not added to the
7 principal of the loan shall not be considered financed directly or
8 indirectly by the creditor;

9 (n) Falsify any documentation relating to a mortgage loan
10 or a mortgage loan application; ~~or~~

11 (o) Recommend or encourage default on an existing loan or
12 other debt prior to and in connection with the closing or planned
13 closing of a mortgage loan that refinances all or any portion of
14 such existing loan or debt; or

15 (p) Borrow money from, personally loan money to, or
16 guarantee any loan made to any customer or applicant for a mortgage
17 loan.

18 (2) Any person who violates any provision of subsection
19 (1) of this section is guilty of a Class III misdemeanor.

20 (3) Any person who violates any provision of subsection
21 (1) of this section is liable to the applicant for a mortgage
22 loan or to the borrower for the fees, costs, and charges incurred
23 in connection with obtaining or attempting to obtain the mortgage
24 loan, damages resulting from such violation, interest on the
25 damage from the date of the violation, and court costs, including

1 reasonable attorney's fees.

2 Sec. 33. Section 45-717, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 45-717 (1) The department may order any person to cease
5 and desist whenever the department determines that the person
6 has violated any provision of the Mortgage Bankers Registration
7 and Licensing Act. Upon entry of a cease and desist order, the
8 director shall promptly notify the affected person that such order
9 has been entered, of the reasons for such order, and that upon
10 receipt, within fifteen business days after the date of the order,
11 of written request from the affected person a hearing will be
12 scheduled within thirty business days after the date of receipt of
13 the written request unless the parties consent to a later date or
14 the hearing officer sets a later date for good cause. If a hearing
15 is not requested and none is ordered by the director, the order
16 shall remain in effect until it is modified or vacated.

17 (2) The director may vacate or modify a cease and desist
18 order if he or she finds that the conditions which caused its entry
19 have changed or that it is otherwise in the public interest to do
20 so.

21 ~~(3) For the purpose of any investigation or proceeding~~
22 ~~under the act, the director or any officer designated by him or~~
23 ~~her may administer oaths and affirmations, subpoena witnesses and~~
24 ~~compel their attendance, take evidence, and require the production~~
25 ~~of any books, papers, correspondence, memoranda, agreements, or~~

1 other documents or records which the director deems relevant or
2 material to the inquiry. If any person refuses to comply with
3 a subpoena issued under this section or to testify with respect
4 to any matter relevant to the proceeding, the district court of
5 Lancaster County may, on application of the director, issue an
6 order requiring the person to comply with the subpoena and to
7 testify. Failure to obey an order of the court to comply with the
8 subpoena may be punished by the court as a civil contempt.

9 ~~(4)~~ (3) A person aggrieved by a cease and desist order of
10 the director may obtain judicial review of the order in the manner
11 prescribed in the Administrative Procedure Act. The director may
12 obtain an order from the district court of Lancaster County for the
13 enforcement of the cease and desist order.

14 ~~(5)~~ (4) A person who violates a cease and desist order of
15 the director may, after notice and hearing and upon further order
16 of the director, be subject to a penalty of not more than five
17 thousand dollars for each act in violation of the cease and desist
18 order.

19 ~~(6)~~ The director may request the Attorney General to
20 enforce the Mortgage Bankers Registration and Licensing Act.
21 A civil enforcement action by the Attorney General may be
22 filed in Lancaster County. A civil enforcement action by the
23 Attorney General may seek temporary and permanent injunctive
24 relief, restitution for a borrower aggrieved by a violation of
25 the act, and costs for the investigation and prosecution of the

1 ~~enforcement action.~~

2 ~~(7) Except when expressly authorized, there shall be no~~
3 ~~private cause of action for any violation of the act.~~

4 ~~(8) Failure to comply with the Mortgage Bankers~~
5 ~~Registration and Licensing Act shall not affect the validity or~~
6 ~~enforceability of any mortgage loan. A person acquiring a mortgage~~
7 ~~loan or an interest in a mortgage loan is not required to ascertain~~
8 ~~the extent of compliance with the act.~~

9 ~~(9) (5) Nothing in the act Mortgage Bankers Registration~~
10 ~~and Licensing Act shall limit any statutory or common-law right of~~
11 ~~any person to bring any action in any court for any act involved in~~
12 ~~the mortgage banking business or the right of the state to punish~~
13 ~~any person for any violation of law.~~

14 Sec. 34. Section 45-717.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 45-717.01 (1) The director may, following a hearing under
17 the Administrative Procedure Act, impose an administrative fine
18 against any officer, director, shareholder, partner, or member of
19 a licensee, if the director finds the licensee or any such person
20 participated in or had knowledge of any act prohibited by sections
21 45-707, 45-711, and 45-714 or otherwise violated the Mortgage
22 Bankers Registration and Licensing Act. Such administrative fine
23 shall be in addition to or separate from any fine imposed against a
24 licensee pursuant to section 45-707.

25 (2) If the director finds, after notice and hearing

1 in accordance with the Administrative Procedure Act, that any
2 person has knowingly committed any act prohibited by section
3 45-707 or otherwise violated the Mortgage Bankers Registration and
4 Licensing Act, the director may order such person to pay (a) an
5 administrative fine of not more than ~~one~~ five thousand dollars for
6 each separate violation and (b) the costs of investigation.

7 (3) If a person fails to pay an administrative fine and
8 the costs of investigation ordered pursuant to this section, a lien
9 in the amount of such fine and costs may be imposed upon all assets
10 and property of such person in this state and may be recovered
11 in a civil action by the director. The lien shall attach to the
12 real property of such person when notice of the lien is filed and
13 indexed against the real property in the office of the register of
14 deeds in the county where the real property is located. The lien
15 shall attach to any other property of such person when notice of
16 the lien is filed against the property in the manner prescribed
17 by law. Failure of the person to pay such fine and costs shall
18 constitute a separate violation of the act.

19 Sec. 35. (1) For the purpose of any investigation or
20 proceeding under the Mortgage Bankers Registration and Licensing
21 Act, the director or any officer designated by him or her may
22 administer oaths and affirmations, subpoena witnesses and compel
23 their attendance, take evidence, and require the production of
24 any books, papers, correspondence, memoranda, agreements, or other
25 documents or records which the director deems relevant or material

1 to the inquiry. If any person refuses to comply with a subpoena
2 issued under this section or to testify with respect to any matter
3 relevant to the proceeding, the district court of Lancaster County
4 may, on application of the director, issue an order requiring the
5 person to comply with the subpoena and to testify. Failure to obey
6 an order of the court to comply with the subpoena may be punished
7 by the court as civil contempt.

8 (2) The director may request the Attorney General to
9 enforce the Mortgage Bankers Registration and Licensing Act. A
10 civil enforcement action by the Attorney General may be filed in
11 the district court of Lancaster County. A civil enforcement action
12 by the Attorney General may seek temporary and permanent injunctive
13 relief, restitution for a borrower aggrieved by a violation of
14 the act, and costs for the investigation and prosecution of the
15 enforcement action.

16 (3) Except when expressly authorized, there shall be no
17 private cause of action for any violation of the Mortgage Bankers
18 Registration and Licensing Act.

19 (4) Failure to comply with the Mortgage Bankers
20 Registration and Licensing Act shall not affect the validity or
21 enforceability of any mortgage loan. A person acquiring a mortgage
22 loan or an interest in a mortgage loan is not required to ascertain
23 the extent of compliance with the act.

24 Sec. 36. Section 45-901, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-901 Sections 45-901 to 45-929 and section 47 of this
2 act shall be known and may be cited as the Delayed Deposit Services
3 Licensing Act.

4 Sec. 37. Section 45-906, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 45-906 The application required by section 45-905 shall
7 be accompanied by:

8 (1) A nonrefundable application fee of five hundred
9 dollars; and

10 (2) A surety bond in the sum of fifty thousand dollars
11 to be executed by the licensee and a surety company authorized to
12 do business in Nebraska and approved by the director conditioned
13 for the faithful performance by the licensee of the duties and
14 obligations pertaining to the delayed deposit services business so
15 licensed and the prompt payment of any judgment recovered against
16 the licensee. The bond or a substitute bond shall remain in effect
17 during all periods of licensing or the licensee shall immediately
18 cease doing business and its license shall be surrendered to or
19 canceled by the department. A surety may cancel a bond only upon
20 thirty days' written notice to the director.

21 The director may at any time require the filing of a new
22 or supplemental bond in the form as provided in subdivision (2) of
23 this section if he or she determines that the bond filed under this
24 section is exhausted or is inadequate for any reason, including,
25 but not limited to, the financial condition of the licensee or

1 the applicant for a license, or violations of the Delayed Deposit
2 Services Licensing Act, any rule, regulation, or order thereunder,
3 or any state or federal law applicable to the licensee or applicant
4 for a license. The new or supplemental bond shall not exceed one
5 hundred thousand dollars.

6 Sec. 38. Section 45-907, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 45-907 (1) When an application for a delayed deposit
9 services business license has been accepted by the director as
10 substantially complete, notice of the filing of the application
11 shall be published by the director for three successive weeks in
12 a legal newspaper published in or of general circulation in the
13 county where the applicant proposes to operate the delayed deposit
14 services business. The costs of the publication shall be paid by
15 the applicant. A public hearing shall be held on each application
16 except as provided in subsection (2) of this section. The date
17 for hearing shall not be less than thirty days after the last
18 publication. Written protest against the issuance of the license
19 may be filed with the Department of Banking and Finance by any
20 person not less than five days before the date set for hearing. The
21 director, in his or her discretion, may grant a continuance. The
22 costs of the hearing shall be paid by the applicant. The director
23 may investigate the propriety of the issuance of a license to the
24 applicant. The costs of such investigation shall be paid by the
25 applicant.

1 (2) The director may waive the hearing requirements of
2 subsection (1) of this section if (a) the applicant has held and
3 operated under a license to engage in the delayed deposit services
4 business in Nebraska pursuant to the Delayed Deposit Services
5 Licensing Act for at least three calendar years immediately prior
6 to the filing of the application, (b) no written protest against
7 the issuance of the license has been filed with the department
8 within fifteen days after publication of a notice of the filing
9 of the application one time in a newspaper of general circulation
10 in the county where the applicant proposes to operate the delayed
11 deposit services business, and (c) in the judgment of the director,
12 the experience, character, and general fitness of the applicant
13 warrant the belief that the applicant will comply with the act.

14 Sec. 39. Section 45-911, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 45-911 A licensee may surrender a delayed deposit
17 services business license by delivering to the director written
18 notice that the license is surrendered. The Department of Banking
19 and Finance may issue a notice of cancellation of the license
20 following such surrender in lieu of revocation proceedings. The
21 surrender shall not affect the licensee's civil or criminal
22 liability for acts committed prior to such surrender, affect the
23 liability for any fines which may be levied against the licensee or
24 any of its officers, directors, shareholders, partners, or members
25 for acts committed before the surrender, affect the liability of

1 the surety on the bond, or entitle such licensee to a return of any
2 part of the annual license fee or fees. The director may establish
3 procedures for the disposition of the books, accounts, and records
4 of the licensee and may require such action as he or she deems
5 necessary for the protection of the makers of checks which are
6 outstanding at the time of surrender of the license.

7 Sec. 40. Section 45-912, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 45-912 A licensee shall be required to notify the
10 director in writing within thirty days after the occurrence of
11 any material development, including, but not limited to:

12 (1) Bankruptcy or corporate reorganization;

13 (2) Business reorganization;

14 (3) Institution of license revocation procedures by any
15 other state or jurisdiction;

16 (4) The filing of a criminal indictment or complaint
17 against the licensee or any of its officers, directors,
18 shareholders, partners, members, employees, or agents; ~~or~~

19 (5) A felony conviction against the licensee or any
20 of the licensee's officers, directors, shareholders, partners,
21 members, employees, or agents; or

22 (6) The termination of employment or association with
23 the licensee of any of the licensee's officers, directors,
24 shareholders, partners, members, employees, or agents for
25 violations or suspected violations of the Delayed Deposit Services

1 Licensing Act, any rule, regulation, or order thereunder, or any
2 state or federal law applicable to the licensee.

3 Sec. 41. Section 45-915, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-915 (1) Except as provided in subsection (2) of this
6 section, a licensee may offer a delayed deposit services business
7 only at an office designated as its principal place of business in
8 the application. ~~The licensee shall maintain its books, accounts,~~
9 ~~and records at its designated principal place of business.~~ A
10 licensee may change the location of its designated principal place
11 of business with the prior written approval of the director. The
12 director may establish forms and procedures for determining whether
13 the change of location should be approved.

14 (2) A licensee may operate branch offices only in the
15 same county in which the licensee's designated principal place of
16 business is located. The licensee may establish a branch office
17 or change the location of a branch office with the prior written
18 approval of the director. The director may establish forms and
19 procedures for determining whether an original branch or branches
20 or a change of location of a branch should be approved.

21 (3) A fee of one hundred fifty dollars shall be paid to
22 the director for each request made pursuant to subsection (1) or
23 (2) of this section.

24 Sec. 42. Section 45-916, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-916 A licensee may operate a delayed deposit services
2 business at a location where any other business is operated or in
3 association or conjunction with any other business if:

4 (1) The books, accounts, and records of the delayed
5 deposit services business are kept and maintained separate and
6 apart from the books, accounts, and records of the other business;
7 and

8 (2) The other business is not of a type which would
9 tend to conceal evasion of the Delayed Deposit Services Licensing
10 Act. If the director determines upon investigation that the other
11 business is of a type which would conceal evasion of the act, the
12 director shall order such licensee to cease the operation of the
13 other business at such location; and -

14 (3) At least thirty days prior to conducting such other
15 business, the licensee provides written notice to the director of
16 (a) its intent to conduct such other business at its location
17 or locations and (b) the nature of such other business and the
18 director does not disapprove of such other business within thirty
19 days after receiving the written notice.

20 Sec. 43. Section 45-917, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 45-917 (1) Every licensee shall, at the time any delayed
23 deposit services transaction is made, give to the maker of the
24 check, or if there are two or more makers, to one of them, a notice
25 written in plain English disclosing:

1 (a) The fee to be charged for the transaction;

2 (b) The date on which the check will be deposited or
3 presented for negotiation; and

4 (c) Any penalty not to exceed fifteen dollars which the
5 licensee will charge if the check is not negotiable on the date
6 agreed upon. If the licensee required the maker to give two checks
7 for one delayed deposit transaction, the licensee shall charge only
8 one penalty in the event both checks are not negotiable on the date
9 agreed upon.

10 (2) In addition to the notice required by subsection
11 (1) of this section, every licensee shall conspicuously display
12 a schedule of all fees, charges, and penalties for all services
13 provided by the licensee. Such notice shall be posted at every
14 office of the licensee.

15 Sec. 44. Section 45-919, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 45-919 (1) No licensee shall:

18 (a) At any one time hold from any one maker more than two
19 checks;

20 (b) At any one time hold from any one maker a check
21 or checks in an aggregate face amount of more than five hundred
22 dollars;

23 (c) Hold or agree to hold a check for more than
24 ~~thirty-one~~ thirty-four days. A check which is in the process
25 of collection for the reason that it was not negotiable on the day

1 agreed upon shall not be deemed as being held in excess of the
2 ~~thirty-one-day~~ thirty-four-day period;

3 (d) Require the maker to receive payment by a method
4 which causes the maker to pay additional or further fees and
5 charges to the licensee or other person; ~~or~~

6 (e) Accept a check as repayment, refinancing, or any
7 other consolidation of a check or checks held by the same licensee;

8 (f) Renew, roll over, defer, or in any way extend a
9 delayed deposit transaction by allowing the maker to pay less
10 than the total amount of the check and any authorized fees or
11 charges. This subdivision shall not prevent a licensee that agreed
12 to hold a check for less than thirty-four days from agreeing to
13 hold the check for an additional period of time no greater than
14 the thirty-four days it would have originally been able to hold the
15 check if (i) the extension is at the request of the maker, (ii)
16 no additional fees are charged for the extension, and (iii) the
17 delayed deposit transaction is completed as required by subdivision
18 (1)(c) of this section. The licensee shall retain written or
19 electronic proof of compliance with this subdivision. If a licensee
20 fails, or is unable, to provide such proof to the department upon
21 request, there shall be a rebuttable presumption that a violation
22 of this subdivision has occurred and the department may pursue
23 any remedies or actions available to it under the Delayed Deposit
24 Services Licensing Act; or

25 (g) Enter into another delayed deposit transaction with

1 the same maker on the same business day as the completion of
2 a delayed deposit transaction unless prior to entering into the
3 transaction the maker and the licensee verify on a form prescribed
4 by the department that completion of the prior delayed deposit
5 transaction has occurred. The licensee shall retain written proof
6 of compliance with this subdivision. If a licensee fails, or is
7 unable, to provide such proof to the department upon request,
8 there shall be a rebuttable presumption that a violation of this
9 subdivision has occurred and the department may pursue any remedies
10 or actions available to it under the act.

11 (2) For purposes of this section, (a) completion of a
12 delayed deposit transaction means the licensee has presented a
13 maker's check for payment to a financial institution as defined in
14 section 8-101 or the maker redeemed the check by paying the full
15 amount of the check in cash to the licensee and (b) licensee shall
16 include (i) a person related to the licensee by common ownership
17 or control, (ii) a person in whom such licensee has any financial
18 interest of ten percent or more, or (iii) any employee or agent of
19 the licensee.

20 Sec. 45. Section 45-922, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 45-922 (1) The director may, following a hearing in
23 accordance with the Administrative Procedure Act, suspend or
24 revoke any license issued pursuant to the Delayed Deposit Services
25 Licensing Act if he or she finds:

1 (a) A licensee or any of its officers, directors,
2 partners, or members has knowingly violated the act or any rule,
3 regulation, or order of the director thereunder;

4 (b) A fact or condition existing which, if it had existed
5 at the time of the original application for such license, would
6 have warranted the director to refuse to issue such license; ~~or~~

7 (c) A licensee has abandoned its place of business for a
8 period of sixty days or more; or

9 (d) A licensee or any of its officers, directors,
10 partners, or members has knowingly subscribed to, made, or caused
11 to be made any false statement or false entry in the books and
12 records of any licensee, has knowingly subscribed to or exhibited
13 false papers with the intent to deceive the Department of Banking
14 and Finance, has failed to make a true and correct entry in the
15 books and records of such licensee of its business and transactions
16 in the manner and form prescribed by the department, or has
17 mutilated, altered, destroyed, secreted, or removed any of the
18 books or records of such licensee without the written approval of
19 the department or as provided in section 45-925.

20 (2) Except as provided in this section, a license shall
21 not be revoked or suspended except after notice and a hearing in
22 accordance with the Administrative Procedure Act.

23 (3)(a) If a licensee fails to renew its license as
24 required by section 45-910 and does not voluntarily surrender the
25 license pursuant to section 45-911, the department may issue a

1 notice of expiration of the license to the licensee in lieu of
2 revocation proceedings.

3 (b) If a licensee fails to maintain a surety bond as
4 required by section 45-906, the department may issue a notice of
5 cancellation of the license in lieu of revocation proceedings.

6 (4) Revocation, suspension, cancellation, or expiration
7 of a license shall not impair or affect the obligation of a
8 preexisting lawful contract between the licensee and any person,
9 including a maker of a check.

10 (5) Revocation, suspension, cancellation, or expiration
11 of a license shall not affect civil or criminal liability for
12 acts committed before the revocation, suspension, cancellation,
13 or expiration or liability for fines levied against the licensee
14 or any of its officers, directors, shareholders, partners, or
15 members, pursuant to section 45-925, for acts committed before the
16 revocation, suspension, cancellation, or expiration.

17 Sec. 46. Section 45-925, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 45-925 (1) If the director finds, after notice and
20 hearing in accordance with the Administrative Procedure Act, that
21 any person has violated the Delayed Deposit Services Licensing Act
22 or any rule, regulation, or order of the director thereunder, the
23 director may order such person to pay (a) an administrative fine of
24 not more than five thousand dollars for each separate violation and
25 (b) the costs of investigation.

1 (2) If any person is found to have violated subdivision
2 (1)(e), (1)(f), or (1)(g) of section 45-919, the director may also
3 order such person to (a) return to the maker or makers all fees
4 collected plus all or part of the amount of the check or checks
5 which the licensee accepted in violation of such subdivision or
6 subdivisions and (b) for a period up to one year not engage in
7 any delayed deposit transaction with any maker for at least three
8 days after the completion of a delayed deposit transaction with the
9 same maker. If a person fails to pay an administrative fine and
10 the costs of investigation ordered pursuant to subsection (1) of
11 this section, a lien in the amount of such fine and costs may be
12 imposed upon all assets and property of such person in this state
13 and may be recovered in a civil action by the director. Failure of
14 the person to pay such fine and costs shall constitute a separate
15 violation of the act.

16 Sec. 47. (1) Each licensee shall keep or make available
17 the books and records relating to transactions made under the
18 Delayed Deposit Services Licensing Act as are necessary to enable
19 the department to determine whether the licensee is complying with
20 the act. The books and records shall be maintained in a manner
21 consistent with accepted accounting practices.

22 (2) A licensee shall, at a minimum, include in its books
23 and records copies of all application materials relating to makers,
24 disclosure agreements, checks, payment receipts, and proofs of
25 compliance required by section 45-919.

1 (3) A licensee shall preserve or keep its books and
2 records relating to every delayed deposit transaction for three
3 years from the date of the inception of the transaction, or two
4 years from the date a final entry is made thereon, including any
5 applicable collection effort, whichever is later.

6 (4) The licensee shall maintain its books, accounts, and
7 records, whether in physical or electronic form, at its designated
8 principal place of business, except that books, accounts, and
9 records which are older than two years may be maintained at any
10 other place within this state as long as such records are available
11 for inspection by the Department of Banking and Finance.

12 Sec. 48. Section 45-1002, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 45-1002 (1) For purposes of the Nebraska Installment Loan
15 Act:

16 (a) Applicant means a person applying for a license under
17 the act;

18 (b) Department means the Department of Banking and
19 Finance;

20 (c) Debt cancellation contract means a loan term
21 or contractual arrangement modifying loan terms under which a
22 financial institution agrees to cancel all or part of a borrower's
23 obligation to repay an extension of credit from the financial
24 institution upon the occurrence of a specified event. The debt
25 cancellation contract may be separate from or a part of other loan

1 documents. The term debt cancellation contract does not include
2 loan payment deferral arrangements in which the triggering event
3 is the borrower's unilateral election to defer repayment or the
4 financial institution's unilateral decision to allow a deferral of
5 repayment;

6 (d) Debt suspension contract means a loan term or
7 contractual arrangement modifying loan terms under which a
8 financial institution agrees to suspend all or part of a borrower's
9 obligation to repay an extension of credit from the financial
10 institution upon the occurrence of a specified event. The debt
11 suspension contract may be separate from or a part of other loan
12 documents. The term debt suspension contract does not include loan
13 payment deferral arrangements in which the triggering event is the
14 borrower's unilateral election to defer repayment or the financial
15 institution's unilateral decision to allow a deferral of repayment;

16 ~~(e)~~ (e) Director means the Director of Banking and
17 Finance;

18 ~~(d)~~ (f) Financial institution has the same meaning as in
19 section 8-101;

20 ~~(e)~~ (g) Licensee means any person who obtains a license
21 under the act; and

22 ~~(f)~~ (h) Person means individual, partnership, limited
23 liability company, association, financial institution, trust,
24 corporation, and any other legal entity.

25 (2) Except as provided in subsection (3) of section

1 45-1017, no revenue arising under the act shall inure to any
2 school fund of the State of Nebraska or any of its governmental
3 subdivisions.

4 (3) Loan, when used in the Nebraska Installment Loan Act,
5 does not include any loan made by a person who is not a licensee
6 on which the interest does not exceed the maximum rate permitted by
7 section 45-101.03.

8 (4) Nothing in the Nebraska Installment Loan Act applies
9 to any loan made by a person who is not a licensee if the interest
10 on the loan does not exceed the maximum rate permitted by section
11 45-101.03.

12 Sec. 49. Section 45-1007, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 45-1007 (1) Except as otherwise provided in this section,
15 a license shall not be issued until the applicant gives to the
16 department a bond in the penal sum of fifty thousand dollars to
17 be executed by the applicant and a surety company authorized to
18 do business in the State of Nebraska, conditioned for the faithful
19 performance by the applicant, as a licensee, of the duties and
20 obligations pertaining to the business of lending money and the
21 prompt payment of any judgment recovered against the applicant, as
22 a licensee, under the Nebraska Installment Loan Act.

23 ~~(2) A person licensed prior to August 31, 2003, shall~~
24 ~~maintain a bond as set forth in subsection (1) of this section,~~
25 ~~except that the penal sum of such bond shall be two thousand~~

1 ~~dollars until March 1, 2004, at which time the penal sum shall be~~
2 ~~fifty thousand dollars.~~

3 ~~(3)~~ (2) The bond or a substitute bond shall remain in
4 effect or the licensee shall immediately cease making loans and the
5 license shall be canceled by the director.

6 Sec. 50. Section 45-1024, Revised Statutes Supplement,
7 2005, is amended to read:

8 45-1024 (1) Except as provided in section 45-1025 and
9 subsection (6) of this section, every licensee may make loans and
10 may contract for and receive on such loans charges at a rate
11 not exceeding twenty-four percent per annum on that part of the
12 unpaid principal balance on any loan not in excess of one thousand
13 dollars, and twenty-one percent per annum on any remainder of
14 such unpaid principal balance. Except for loans secured by mobile
15 homes, a licensee may not make loans for a period in excess of
16 one hundred forty-five months if the amount of the loan is greater
17 than three thousand dollars but less than twenty-five thousand
18 dollars. Charges on loans made under the Nebraska Installment Loan
19 Act shall not be paid, deducted, or received in advance. The
20 contracting for, charging of, or receiving of charges as provided
21 for in subsection (2) of this section shall not be deemed to be the
22 payment, deduction, or receipt of such charges in advance.

23 (2) When the loan contract requires repayment in
24 substantially equal and consecutive monthly installments of
25 principal and charges combined, the licensee may, at the time

1 the loan is made, precompute the charges at the agreed rate on
2 scheduled unpaid principal balances according to the terms of the
3 contract and add such charges to the principal of the loan. Every
4 payment may be applied to the combined total of principal and
5 precomputed charges until the contract is fully paid. All payments
6 made on account of any loan except for default and deferment
7 charges shall be deemed to be applied to the unpaid installments in
8 the order in which they are due. The portion of the precomputed
9 charges applicable to any particular month of the contract, as
10 originally scheduled or following a deferment, shall be that
11 proportion of such precomputed charges, excluding any adjustment
12 made for a first installment period of more than one month and any
13 adjustment made for deferment, which the balance of the contract
14 scheduled to be outstanding during such month bears to the sum
15 of all monthly balances originally scheduled to be outstanding
16 by the contract. This section shall not limit or restrict the
17 manner of calculating charges, whether by way of add-on, single
18 annual rate, or otherwise, if the rate of charges does not exceed
19 that permitted by this section. Charges may be contracted for and
20 earned at a single annual rate, except that the total charges from
21 such rate shall not be greater than the total charges from the
22 several rates otherwise applicable to the different portions of the
23 unpaid balance according to subsection (1) of this section. All
24 loan contracts made pursuant to this subsection are subject to the
25 following adjustments:

1 (a) Notwithstanding the requirement for substantially
2 equal and consecutive monthly installments, the first installment
3 period may not exceed one month by more than twenty-one days and
4 may not fall short of one month by more than eleven days. The
5 charges for each day exceeding one month shall be one-thirtieth of
6 the charges which would be applicable to a first installment period
7 of one month. The charge for extra days in the first installment
8 period may be added to the first installment and such charges for
9 such extra days shall be excluded in computing any rebate;

10 (b) If prepayment in full by cash, a new loan, or
11 otherwise occurs before the first installment due date, the charges
12 shall be recomputed at the rate of charges contracted for in
13 accordance with subsection (1) or (2) of this section upon the
14 actual unpaid principal balances of the loan for the actual time
15 outstanding by applying the payment, or payments, first to charges
16 at the agreed rate and the remainder to the principal. The amount
17 of charges so computed shall be retained in lieu of all precomputed
18 charges;

19 (c) If a contract is prepaid in full by cash, a new loan,
20 or otherwise after the first installment due date, the borrower
21 shall receive a rebate of an amount which is not less than the
22 amount obtained by applying to the unpaid principal balances as
23 originally scheduled or, if deferred, as deferred, for the period
24 following prepayment, according to the actuarial method, the rate
25 of charge contracted for in accordance with subsection (1) or

1 (2) of this section. The licensee may round the rate of charge
2 to the nearest one-half of one percent if such procedure is not
3 consistently used to obtain a greater yield than would otherwise
4 be permitted. Any default and deferment charges which are due and
5 unpaid may be deducted from any rebate. No rebate shall be required
6 for any partial prepayment. No rebate of less than one dollar need
7 be made. Acceleration of the maturity of the contract shall not
8 in itself require a rebate. If judgment is obtained before the
9 final installment date, the contract balance shall be reduced by
10 the rebate which would be required for prepayment in full as of the
11 date judgment is obtained;

12 (d) If any installment on a precomputed or interest
13 bearing loan is unpaid in full for ten or more consecutive days,
14 Sundays and holidays included, after it is due, the licensee may
15 charge and collect a default charge not exceeding an amount equal
16 to five percent of such installment. If any installment payment
17 is made by a check, draft, or similar signed order which is not
18 honored because of insufficient funds, no account, or any other
19 reason except an error of a third party to the loan contract, the
20 licensee may charge and collect a fifteen-dollar bad check charge.
21 Such default or bad check charges may be collected when due or at
22 any time thereafter;

23 (e) If, as of an installment due date, the payment
24 date of all wholly unpaid installments is deferred one or more
25 full months and the maturity of the contract is extended for

1 a corresponding period, the licensee may charge and collect a
2 deferment charge not exceeding the charge applicable to the first
3 of the installments deferred, multiplied by the number of months
4 in the deferment period. The deferment period is that period
5 during which no payment is made or required by reason of such
6 deferment. The deferment charge may be collected at the time of
7 deferment or at any time thereafter. The portion of the precomputed
8 charges applicable to each deferred balance and installment period
9 following the deferment period shall remain the same as that
10 applicable to such balance and periods under the original loan
11 contract. No installment on which a default charge has been
12 collected, or on account of which any partial payment has been
13 made, shall be deferred or included in the computation of the
14 deferment charge unless such default charge or partial payment is
15 refunded to the borrower or credited to the deferment charge. Any
16 payment received at the time of deferment may be applied first
17 to the deferment charge and the remainder, if any, applied to the
18 unpaid balance of the contract, except that if such payment is
19 sufficient to pay, in addition to the appropriate deferment charge,
20 any installment which is in default and the applicable default
21 charge, it shall be first so applied and any such installment shall
22 not be deferred or subject to the deferment charge. If a loan is
23 prepaid in full during the deferment period, the borrower shall
24 receive, in addition to the required rebate, a rebate of that
25 portion of the deferment charge applicable to any unexpired full

1 month or months of such deferment period; and

2 (f) If two or more full installments are in default
3 for one full month or more at any installment date and if the
4 contract so provides, the licensee may reduce the contract balance
5 by the rebate which would be required for prepayment in full as
6 of such installment date and the amount remaining unpaid shall
7 be deemed to be the unpaid principal balance and thereafter in
8 lieu of charging, collecting, receiving, and applying charges as
9 provided in this subsection, charges may be charged, collected,
10 received, and applied at the agreed rate as otherwise provided by
11 this section until the loan is fully paid.

12 (3) The charges, as referred to in subsection (1) of
13 this section, shall not be compounded. The charging, collecting,
14 and receiving of charges as provided in subsection (2) of this
15 section shall not be deemed compounding. If part or all of the
16 consideration for a loan contract is the unpaid principal balance
17 of a prior loan, then the principal amount payable under such
18 loan contract may include any unpaid charges on the prior loan
19 which have accrued within sixty days before the making of such
20 loan contract and may include the balance remaining after giving
21 the rebate required by subsection (2) of this section. Except as
22 provided in subsection (2) of this section, charges shall (a) be
23 computed and paid only as a percentage per month of the unpaid
24 principal balance or portions thereof and (b) be computed on the
25 basis of the number of days actually elapsed. For purposes of

1 computing charges, whether at the maximum rate or less, a month
2 shall be that period of time from any date in a month to the
3 corresponding date in the next month but if there is no such
4 corresponding date then to the last day of the next month, and a
5 day shall be considered one-thirtieth of a month when computation
6 is made for a fraction of a month.

7 (4) Except as provided in subsections (5) and (6) of
8 this section, in addition to that provided for under the Nebraska
9 Installment Loan Act, no further or other amount whatsoever shall
10 be directly or indirectly charged, contracted for, or received.
11 If any amount, in excess of the charges permitted, is charged,
12 contracted for, or received, the loan contract shall not on
13 that account be void, but the licensee shall have no right to
14 collect or receive any interest or other charges whatsoever. If
15 such interest or other charges have been collected or contracted
16 for, the licensee shall refund to the borrower all interest
17 and other charges collected and shall not collect any interest
18 or other charges contracted for and thereafter due on the loan
19 involved, as liquidated damages, and the licensee or its assignee,
20 if found liable, shall pay the costs of any action relating
21 thereto, including reasonable attorney's fees. No licensee shall
22 be found liable under this subsection if the licensee shows
23 by a preponderance of the evidence that the violation was not
24 intentional and resulted from a bona fide error notwithstanding
25 the maintenance of procedures reasonably adopted to avoid any such

1 error.

2 (5) A borrower may be required to pay all reasonable
3 expenses incurred in connection with the making, closing,
4 disbursing, extending, readjusting, or renewing of loans. Such
5 expenses may include abstracting, recording, releasing, and
6 registration fees; premiums paid for nonfiling insurance;
7 premiums paid on insurance policies covering tangible personal
8 property securing the loan; amounts charged for a debt
9 cancellation contract or a debt suspension contract, as agreed
10 upon by the parties, if the debt cancellation contract or debt
11 suspension contract is a contract of a financial institution and
12 such contract is sold directly by such financial institution or by
13 an unaffiliated, nonexclusive agent of such financial institution
14 in accordance with 12 C.F.R. part 37, as such part existed on
15 January 1, 2006, and the financial institution is responsible for
16 the unaffiliated, nonexclusive agent's compliance with such part;
17 title examinations; credit reports; survey; and taxes or
18 charges imposed upon or in connection with the making and recording
19 or releasing of any mortgage. Except as provided in subsection
20 (6) of this section, a borrower may also be required to pay a
21 nonrefundable loan origination fee not to exceed the lesser of
22 five hundred dollars or an amount equal to seven percent of that
23 part of the original principal balance of any loan not in excess
24 of two thousand dollars and five percent on that part of the
25 original principal balance in excess of two thousand dollars, if

1 the licensee has not made another loan to the borrower within the
2 previous twelve months. If the licensee has made another loan to
3 the borrower within the previous twelve months, a nonrefundable
4 loan origination fee may only be charged on new funds advanced
5 on each successive loan. Such reasonable initial charges may be
6 collected from the borrower or included in the principal balance of
7 the loan at the time the loan is made and shall not be considered
8 interest or a charge for the use of the money loaned.

9 (6)(a) Loans secured solely by real property that are
10 not made pursuant to subdivision (11) of section 45-101.04 on real
11 property, as that term is defined in section 45-702, shall not
12 be subject to the limitations on the rate of interest provided
13 in subsection (1) of this section or the limitations on the
14 nonrefundable loan origination fee under subsection (5) of this
15 section if (i) the principal amount of the loan is seven thousand
16 five hundred dollars or more and (ii) the sum of the principal
17 amount of the loan and the balances of all other liens against the
18 property do not exceed one hundred percent of the appraised value
19 of the property. Acceptable methods of determining appraised value
20 shall be made by the department pursuant to rule, regulation, or
21 order.

22 (b) An origination fee on such loan shall be computed
23 only on the principal amount of the loan reduced by any portion
24 of the principal that consists of the amount required to pay off
25 another loan made under this subsection by the same licensee.

1 (c) A prepayment penalty on such loan shall be permitted
2 only if (i) the maximum amount of the penalty to be assessed is
3 stated in writing at the time the loan is made, (ii) the loan is
4 prepaid in full within two years from the date of the loan, and
5 (iii) the loan is prepaid with money other than the proceeds of
6 another loan made by the same licensee. Such prepayment penalty
7 shall not exceed six months interest on eighty percent of the
8 original principal balance computed at the agreed rate of interest
9 on the loan.

10 (d) A licensee making a loan pursuant to this subsection
11 may obtain an interest in any fixtures attached to such real
12 property and any insurance proceeds payable in connection with such
13 real property or the loan.

14 (e) For purposes of this subsection, principal amount
15 of the loan means the total sum owed by the borrower including,
16 but not limited to, insurance premiums, loan origination fees, or
17 any other amount that is financed, except that for purposes of
18 subdivision (6)(b) of this section, loan origination fees shall not
19 be included in calculating the principal amount of the loan.

20 Sec. 51. Section 45-1026, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 45-1026 (1) The following types of insurance or one
23 or more of the following types of insurance may be written
24 in connection with loans made by licensees under the Nebraska
25 Installment Loan Act:

1 (a) Fire, theft, windstorm, or comprehensive, including
2 fire, theft, and windstorm, fifty dollars or more deductible
3 collision, and bodily injury liability and property damage
4 liability upon motor vehicles;

5 (b) Fire and extended-coverage insurance upon real
6 property;

7 (c) Fire and extended-coverage insurance upon tangible
8 personal property, limited to the principal amount of the loan;

9 (d) Involuntary unemployment or job protection insurance.
10 In the event of a renewal of a loan contract, this type of
11 insurance shall be canceled and a refund of the unearned premium
12 credited or made before new insurance of this type may be
13 rewritten. Such insurance shall not be required as a condition
14 precedent to the making of such loan; and

15 (e) Life, health, and accident insurance or any of them,
16 except that the amount of such insurance shall not exceed the total
17 amount to be repaid under the loan contract and the term shall
18 not extend beyond the final maturity date of the loan contract. In
19 the event of a renewal of a loan contract, this type of insurance
20 shall be canceled and a refund of the unearned premium credited or
21 made before new insurance of this type may be written in connection
22 with such loan. Such insurance shall not be required as a condition
23 precedent to the making of such loan.

24 (2) In addition to the types of insurance written under
25 subsection (1) of this section by licensees under the act, any

1 other type of insurance or motor club service as defined in section
2 44-3707 may be ~~written for~~ provided for the benefit of a licensee's
3 borrower or the borrower's immediate family whether or not in
4 connection with a loan, except that such insurance or motor club
5 service shall not be required as a condition precedent to the
6 making of any loan. Nothing in this subsection alters or eliminates
7 any insurance licensing requirements or certificate of authority
8 requirements under the Motor Club Services Act.

9 (3) Notwithstanding sections 45-1024 and 45-1025, any
10 gain or advantage, in the form of commission or otherwise, to
11 the licensee or to any employee, affiliate, or associate of the
12 licensee from such insurance or motor club service ~~or its~~ the sale
13 thereof shall not be deemed to be an additional or further charge
14 in connection with the loan contract. The insurance premium ~~for~~
15 ~~such insurance~~ or motor club service contract fee may be collected
16 from the borrower or ~~included in~~ financed through the loan contract
17 at the time the loan is made.

18 ~~(4)~~ (4) (a) Insurance permitted under this section shall
19 be obtained through a duly licensed insurance agent, agency,
20 or broker. Premiums shall not exceed those fixed by law or
21 current applicable manual rates. Insurance written, as authorized
22 by this section, may contain a mortgage clause or other appropriate
23 provision to protect the insurable interest of the licensee.

24 (b) Motor club services permitted under this section
25 shall be obtained through a motor club which holds a certificate of

1 authority under the Motor Club Services Act.

2 (5) In the event of a renewal of a loan contract, any
3 insurance or motor club service sold pursuant to this section shall
4 be canceled and (a) a refund of the unearned premium or motor
5 club service contract fee credited or made before new insurance or
6 motor club service of the same type as that being canceled may be
7 rewritten or (b) the holder of the loan contract shall send notice
8 to the buyer within fifteen business days after cancellation of
9 the name, address, and telephone number of the insurance company
10 or motor club which issued the insurance contract or motor club
11 service contract or the party responsible for any refund and notice
12 that the buyer may be eligible for a refund. A copy of such notice
13 shall be retained by the holder of the loan contract.

14 (6) If any insurance or motor club service sold pursuant
15 to this section is canceled or the premium or motor club service
16 contract fee adjusted during the term of the loan contract, any
17 refund of the insurance premium or motor club service contract fee
18 plus the unearned interest thereon received by the holder shall be
19 credited by the holder to the loan contract or otherwise refunded,
20 except to the extent applied toward payment for similar insurance
21 or motor club service protecting the interests of the buyer and the
22 holder or either of them.

23 (7) If any insurance or motor club service sold pursuant
24 to this section is canceled due to the payment of all sums for
25 which the buyer is liable under a loan contract, the holder of the

1 loan contract shall, upon receipt of payment of all sums due, send
2 notice to the buyer within fifteen business days after payment of
3 the sums due of the name, address, and telephone number of the
4 insurance company or motor club which issued the insurance contract
5 or motor club service contract or the party responsible for any
6 refund and notice that the buyer may be eligible for a refund. A
7 copy of such notice shall be retained by the holder of the loan
8 contract. This subsection does not apply if the holder of the loan
9 contract previously credited the refund of the insurance premium or
10 motor club service contract fee to the loan contract or otherwise
11 refunded the insurance premium or motor club service contract fee
12 to the buyer.

13 Sec. 52. Section 76-1006, Revised Statutes Cumulative
14 Supplement, 2004, is amended to read:

15 76-1006 The power of sale conferred in the Nebraska Trust
16 Deeds Act upon the trustee shall not be exercised until:

17 (1) The trustee or the attorney for the trustee shall
18 first file for record in the office of the register of deeds of
19 each county wherein the trust property or some part or parcel
20 thereof is situated a notice of default identifying the trust
21 deed by stating the name of the trustor named therein and giving
22 the book and page or computer system reference where the same
23 is recorded and a description of the trust property, containing
24 a statement that a breach of an obligation for which the trust
25 property was conveyed as security has occurred, and setting forth

1 the nature of such breach and of his or her election to sell or
2 cause to be sold such property to satisfy the obligation;

3 (2) If the trust property is used in farming operations
4 carried on by the trustor, not in any incorporated city or village,
5 the notice of default also sets forth:

6 (a) A statement that the default may be cured within two
7 months of the filing for record of the notice of default and the
8 obligation and trust deed may be thereby reinstated as provided in
9 section 76-1012;

10 (b) A statement of the amount of the entire unpaid
11 principal sum secured by the trust deed, the amount of interest
12 accrued thereon to and including the date the notice of default is
13 signed by the trustee or the trustee's attorney, and the dollar
14 amount of the per diem interest accruing from and after such date;
15 and

16 (c) A statement of the amount of the unpaid principal
17 which would not then be due had no default occurred; and

18 (3) After the lapse of not less than one month, or two
19 months if the notice of default is subject to subdivision (2) of
20 this section, the trustee or the attorney for the trustee shall
21 give notice of sale as provided in section 76-1007.

22 Sec. 53. Section 76-1007, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 76-1007 (1) The trustee or the attorney for the
25 trustee shall give written notice of the time and place of sale

1 particularly describing the property to be sold by publication of
 2 such notice, at least five times, once a week for five consecutive
 3 weeks, the last publication to be at least ten days but not more
 4 than thirty days prior to the sale, in some newspaper having a
 5 general circulation in each county in which the property to be
 6 sold, or some part thereof, is situated.

7 (2) The sale shall be held at the time and place
 8 designated in the notice of sale which shall be between the hours
 9 of nine a.m. and five p.m. and at the premises or at the courthouse
 10 of the county in which the property to be sold, or some part
 11 thereof, is situated.

12 (3) The notice of sale shall be sufficient if made in
 13 substantially the following form:

14 Notice of Trustee's Sale

15 The following described property will be sold at public
 16 auction to the highest bidder at the door of the county
 17 courthouse in, County of, Nebraska, on
 18, 20.... .

19 (Name of Trustee)

20 Sec. 54. Section 76-1008, Revised Statutes Cumulative
 21 Supplement, 2004, is amended to read:

22 76-1008 (1) Any person desiring a copy of any notice
 23 of default and of any notice of sale under any trust deed may,
 24 at any time subsequent to the filing for record of the trust
 25 deed and prior to the filing for record of a notice of default

1 thereunder, file for record in the office of the register of deeds
2 of any county in which any part or parcel of the trust property
3 is situated a duly acknowledged request for a copy of any such
4 notice of default and notice of sale. The request shall set forth
5 the name and address of the person or persons requesting copies of
6 such notices and shall identify the trust deed by stating the names
7 of the original parties thereto, the date of filing for record
8 thereof, and the book and page or computer system reference where
9 the same is recorded and shall be in substantially the following
10 form:

11 Request is hereby made that a copy of any notice of
12 default and a copy of notice of sale under the trust deed
13 filed for record, 20..., and recorded in book
14, page, (or computer system reference)
15 Records of County, Nebraska, executed by
16 as trustor, in which is named as beneficiary and
17 as trustee, be mailed to(insert name).....
18 at(insert address)..... .

19 Signature

20 (2) Not later than ten days after recordation of such
21 notice of default, the trustee or beneficiary or the attorney for
22 the trustee or beneficiary shall mail, by registered or certified
23 mail with postage prepaid, a copy of such notice with the recording
24 date shown thereon, addressed to each person whose name and address
25 is set forth in a request therefor which has been recorded prior

1 to the filing for record of the notice of default, directed to the
2 address designated in such request. At least twenty days before
3 the date of sale, the trustee or the attorney for the trustee
4 shall mail, by registered or certified mail with postage prepaid,
5 a copy of the notice of the time and place of sale, addressed
6 to each person whose name and address is set forth in a request
7 therefor which has been recorded prior to the filing for record of
8 the notice of default, directed to the address designated in such
9 request.

10 (3) Each trust deed shall contain a request that a
11 copy of any notice of default and a copy of any notice of sale
12 thereunder shall be mailed to each person who is a party thereto
13 at the address of such person set forth therein, and a copy of any
14 notice of default and of any notice of sale shall be mailed to each
15 such person at the same time and in the same manner required as
16 though a separate request therefor had been filed by each of such
17 persons as provided in this section.

18 (4) If no address of the trustor is set forth in the
19 trust deed and if no request for notice by such trustor has been
20 recorded as provided in this section, a copy of the notice of
21 default shall be published at least three times, once a week for
22 three consecutive weeks, in a newspaper of general circulation in
23 each county in which the trust property or some part thereof is
24 situated, such publication to commence not later than ten days
25 after the filing for record of the notice of default.

1 (5) No request for a copy of any notice filed for record
2 pursuant to this section nor any statement or allegation in any
3 such request nor any record thereof shall affect the title to
4 trust property or be deemed notice to any person that any person
5 requesting copies of notice of default or of notice of sale has or
6 claims any right, title, or interest in or lien or claim upon the
7 trust property.

8 Sec. 55. Section 76-1012, Revised Statutes Cumulative
9 Supplement, 2004, is amended to read:

10 76-1012 (1) Whenever all or a portion of the principal
11 sum of any obligation secured by a trust deed has, prior to
12 the maturity date fixed in such obligation, become due or been
13 declared due by reason of a breach or default in the performance
14 of any obligation secured by the trust deed, including a default
15 in the payment of interest or of any installment of principal,
16 or by reason of failure of the trustor to pay, in accordance
17 with the terms of such trust deed, taxes, assessments, premiums
18 for insurance, or advances made by the beneficiary in accordance
19 with terms of such obligation or of such trust deed, the trustor
20 or his or her successor in interest in the trust property or
21 any part thereof or any other person having a subordinate lien
22 or encumbrance of record thereon or any beneficiary under a
23 subordinate trust deed, at any time within one month, or within
24 two months if the notice of default is subject to subdivision (2)
25 of section 76-1006, of the filing for record of notice of default

1 under such trust deed, if the power of sale is to be exercised,
2 may pay to the beneficiary or his or her successor in interest the
3 entire amount then due under the terms of such trust deed and the
4 obligation secured thereby, including costs and expenses actually
5 incurred in enforcing the terms of such obligation, or trust deed,
6 and the trustee's fees actually incurred not exceeding in the
7 aggregate fifty dollars or one-half of one percent of the entire
8 unpaid principal sum secured, whichever is greater, other than such
9 portion of the principal as would not then be due had no default
10 occurred, and thereby cure the default theretofore existing and
11 thereupon all proceedings theretofore had or instituted shall be
12 dismissed or discontinued, and the obligation and trust deed shall
13 be reinstated and shall be and remain in force and effect the same
14 as if no acceleration had occurred. If the default is cured and the
15 trust deed reinstated in the manner provided in this section, the
16 beneficiary, or his or her assignee, shall, on demand of any person
17 having an interest in the trust property, execute and deliver to
18 him or her a request to the trustee that the trustee execute,
19 acknowledge, and deliver a cancellation of the recorded notice of
20 default under such trust deed, and any beneficiary under a trust
21 deed, or his or her assignee, who, for a period of thirty days
22 after such demand, refuses to request the trustee to execute and
23 deliver such cancellation shall be liable to the person entitled
24 to such request for all damages resulting from such refusal. A
25 cancellation of recorded notice of default under a trust deed

1 shall, when acknowledged, be entitled to be recorded and shall be
 2 sufficient if made and executed by the trustee in substantially the
 3 following form:

4 Cancellation of Notice of Default

5 The undersigned hereby cancels the notice of default
 6 filed for record, 20..., and recorded in book,
 7 page, (or computer system reference) Records
 8 of County, Nebraska, which notice of default refers
 9 to the trust deed executed by as trustor, in which
 10 is named as beneficiary and as trustee,
 11 and filed for record, 20..., and recorded in book
 12, page, (or computer system reference)
 13 Records of County, Nebraska.

14 Signature of trustee

15 Signature of trustee or attorney for trustee
 16

17 (2) Whenever all or a portion of the principal sum of
 18 any obligation secured by a trust deed has, prior to the maturity
 19 date fixed in such obligation, become due or been declared due by
 20 reason of a breach or default in the performance of any obligation
 21 secured by the trust deed, including a default in the payment
 22 of interest or of any installment of principal, or by reason of
 23 failure of the trustor to pay, in accordance with the terms of such
 24 trust deed, taxes, assessments, premiums for insurance, or advances
 25 made by the beneficiary in accordance with terms of such obligation

1 or of such trust deed, in the event the trustor or his or her
2 successor in interest or any other person having a subordinate
3 lien or encumbrance of record thereon or any beneficiary under
4 a subordinate trust deed makes payment of the entire amount then
5 due under the terms of such trust deed and the obligation secured
6 thereby at any time subsequent to the breach or default and prior
7 to the sale of the trust property under section 76-1010, the
8 beneficiary shall be allowed to collect the costs and expenses
9 actually incurred in enforcing the terms of such obligation, or
10 trust deed, including the trustee's fees, costs, and expenses
11 actually incurred, not to exceed the amount provided in the trust
12 deed or the obligation secured thereby.

13 Sec. 56. Section 9-705, Uniform Commercial Code, Reissue
14 Revised Statutes of Nebraska, is amended to read:

15 9-705 Effectiveness of action taken before July 1, 2001.

16 (a) If action, other than the filing of a financing
17 statement, is taken before July 1, 2001, and the action would have
18 resulted in priority of a security interest over the rights of
19 a person that becomes a lien creditor had the security interest
20 become enforceable before July 1, 2001, the action is effective to
21 perfect a security interest that attaches under this article within
22 one year after July 1, 2001. An attached security interest becomes
23 unperfected one year after July 1, 2001, unless the security
24 interest becomes a perfected security interest under this article
25 before the expiration of that period.

1 (b) The filing of a financing statement before July 1,
2 2001, is effective to perfect a security interest to the extent
3 the filing would satisfy the applicable requirements for perfection
4 under this article.

5 (c) This article does not render ineffective an effective
6 financing statement that, before July 1, 2001, is filed and
7 satisfies the applicable requirements for perfection under the law
8 of the jurisdiction governing perfection as provided in section
9 9-103, as such section existed immediately before July 1, 2001.
10 However, except as otherwise provided in subsections (d) and (e) and
11 and (f) and section 9-706, the financing statement ceases to be
12 effective at the earlier of:

13 (1) the time the financing statement would have ceased
14 to be effective under the law of the jurisdiction in which it is
15 filed; or

16 (2) June 30, 2006.

17 (d) The filing of a continuation statement on or after
18 July 1, 2001, does not continue the effectiveness of the financing
19 statement filed before July 1, 2001. However, upon the timely
20 filing of a continuation statement on or after July 1, 2001, and
21 in accordance with the law of the jurisdiction governing perfection
22 as provided in part 3, the effectiveness of a financing statement
23 filed in the same office in that jurisdiction before July 1, 2001,
24 continues for the period provided by the law of that jurisdiction.

25 (e) Subdivision (c)(2) applies to a financing statement

1 that, before July 1, 2001, is filed against a transmitting utility
2 and satisfies the applicable requirements for perfection under
3 the law of the jurisdiction governing perfection as provided in
4 section 9-103, as such section existed immediately before July 1,
5 2001, only to the extent that part 3 provides that the law of
6 a jurisdiction other than the jurisdiction in which the financing
7 statement is filed governs perfection of a security interest in
8 collateral covered by the financing statement.

9 (f) Subdivision (c)(2) does not apply to a financing
10 statement that was filed in the proper place in the state before
11 July 1, 2001, pursuant to section 9-401, as such section existed
12 immediately before July 1, 2001, and for which the proper place of
13 filing in the state was not changed pursuant to section 9-501, as
14 such section existed on July 1, 2001.

15 ~~(f)~~ (g) A financing statement that includes a financing
16 statement filed before July 1, 2001, and a continuation statement
17 filed on or after July 1, 2001, is effective only to the extent
18 that it satisfies the requirements of part 5 for an initial
19 financing statement.

20 Sec. 57. Section 9-707, Uniform Commercial Code, Reissue
21 Revised Statutes of Nebraska, is amended to read:

22 9-707 Amendment of pre-operative-date financing
23 statement.

24 (a) In this section, "pre-operative-date financing
25 statement" means a financing statement filed before July 1, 2001.

1 (b) On or after July 1, 2001, a person may add
2 or delete collateral covered by, continue or terminate the
3 effectiveness of, or otherwise amend the information provided in, a
4 pre-operative-date financing statement only in accordance with the
5 law of the jurisdiction governing perfection as provided in part
6 3. However, the effectiveness of a pre-operative-date financing
7 statement also may be terminated in accordance with the law of the
8 jurisdiction in which the financing statement is filed.

9 (c) Except as otherwise provided in subsection (d), if
10 the law of this state governs perfection of a security interest,
11 the information in a pre-operative-date financing statement may be
12 amended on or after July 1, 2001, only if:

13 (1) the pre-operative-date financing statement and an
14 amendment are filed in the office specified in section 9-501;

15 (2) an amendment is filed in the office specified in
16 section 9-501 concurrently with, or after the filing in that office
17 of, an initial financing statement that satisfies section 9-706(c);
18 or

19 (3) an initial financing statement that provides the
20 information as amended and satisfies section 9-706(c) is filed in
21 the office specified in section 9-501.

22 (d) If the law of this state governs perfection of
23 a security interest, the effectiveness of a pre-operative-date
24 financing statement may be continued only under section 9-705(d)
25 and ~~-(f)~~ (g) or 9-706.

1 (e) Whether or not the law of this state governs
2 perfection of a security interest, the effectiveness of a
3 pre-operative-date financing statement filed in this state may
4 be terminated on or after July 1, 2001, by filing a termination
5 statement in the office in which the pre-operative-date financing
6 statement is filed, unless an initial financing statement that
7 satisfies section 9-706(c) has been filed in the office specified
8 by the law of the jurisdiction governing perfection as provided in
9 part 3 as the office in which to file a financing statement.

10 Sec. 58. Sections 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 16,
11 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35,
12 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, and 60 of this
13 act become operative three calendar months after the adjournment
14 of this legislative session. The other sections of this act become
15 operative on their effective date.

16 Sec. 59. Original sections 8-148.04, 8-179, 45-335,
17 45-336, 45-1002, and 45-1026, Reissue Revised Statutes of Nebraska,
18 sections 8-178, 76-1006, 76-1007, 76-1008, and 76-1012, Revised
19 Statutes Cumulative Supplement, 2004, sections 8-1,140, 8-355,
20 21-17,115, and 45-1024, Revised Statutes Supplement, 2005, and
21 sections 9-705 and 9-707, Uniform Commercial Code, Reissue Revised
22 Statutes of Nebraska, are repealed.

23 Sec. 60. Original sections 45-701, 45-702, 45-709,
24 45-714, 45-717, 45-717.01, 45-901, 45-906, 45-907, 45-911, 45-912,
25 45-915, 45-916, 45-917, 45-919, 45-922, 45-925, and 45-1007,

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1 Reissue Revised Statutes of Nebraska, sections 8-141, 8-1001.01,
2 8-1008, 8-1010, 8-1012, 8-1111, 8-1601, 8-1602, and 8-1605, Revised
3 Statutes Cumulative Supplement, 2004, and sections 45-706 and
4 45-707, Revised Statutes Supplement, 2005, are repealed.

5 Sec. 61. Since an emergency exists, this act takes effect
6 when passed and approved according to law.